

SIXTY-SIXTH DAY

(Tuesday, May 16, 1961)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment, and was called to order by the President.

The roll was called and the following Senators were present:

Aikin	Martin
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis
Lane	

A quorum was announced present.

Reverend W. H. Townsend, Chaplain, offered the invocation as follows:

"Our Father, in these days of clamor and confusion, give us ears to hear the voices of justice, freedom, brotherhood and truth. Take away from us all pride and prejudice; make us aware that grass withers and the flowers fade, but Truth shall stand forever. Amen."

On motion of Senator Aikin, and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

Message from the Governor

The following message received from the Governor was read and was filed with the Secretary of Senate:

Austin, Texas,
May 15, 1961.

Hon. Ben Ramsey
Lieutenant Governor of Texas
Austin, Texas

Dear Governor Ramsey:

I have just been notified by the sponsor that a Concurrent Resolution has passed both the Senate and the House of Representatives requesting that S. B. No. 414 be returned to the Senate for corrections. Pursuant to

that Resolution, I am returning the bill herewith.

Respectfully submitted,
PRICE DANIEL.

PD:io
Enclosure

Reports of Standing Committees

Senator Hardeman submitted the following reports:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Jurisprudence, to which was referred S. C. R. No. 60, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HARDEMAN, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Jurisprudence, to which was referred H. C. R. No. 94, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

HARDEMAN, Chairman.

Senator Parkhouse submitted the following reports:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred H. B. No. 736, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred H. B. No. 972, have had the same under consideration, and we are

instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred H. B. No. 1101, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred H. B. No. 600, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Water and Conservation, to whom was referred S. B. No. 472, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

PARKHOUSE, Chairman.

Senator Lane submitted the following reports:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 1035, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 596, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 671, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 289, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass as amended and be printed.

LANE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 112, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 541, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 334, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass as amended, and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 755, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 168, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 167, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 1049, have had the same under consideration, and we are instructed to report it back to the Senate with

the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 512, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 511, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred H. B. No. 524, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

LANE, Chairman.

Senator Fuller submitted the following report:

Austin, Texas,

May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Transportation, to whom was referred H. B. No. 764, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

FULLER, Chairman.

Senator Colson submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Public Health, to whom was referred S. B. No. 453, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

COLSON, Chairman.

House Bill 334 Ordered Not Printed

On motion of Senator Lane and by unanimous consent H. B. No. 334 was ordered not printed.

Senate Bill 476 on First Reading

The following local bill was introduced, read first time and referred to the committee indicated:

By Senator Fuller:

S. B. No. 476, A bill to be entitled "An Act constituting a local law for the maintenance of the public roads and highways in Orange County; authorizing the County to issue certificates of indebtedness for the purpose of construction improvements to the public roads within said County and of acquiring right of way for designated State Highways, Federal Highways, and county roads; providing terms, conditions, and provisions relating to said certificates of indebtedness and to their issuance; requiring the levy of a tax to pay such certificates and the interest thereon; authorizing the refunding of said certificates; enacting other provisions relating to the subject; providing that this Act shall be cumulative of other laws relating to the subject; providing a severability clause; and declaring an emergency."

To the Committee on Counties, Cities and Towns.

Bill Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled bill:

S. B. No. 384, A bill to be entitled "An Act permitting the commissioners court of all counties containing more than five hundred thousand

(500,000) population according to the last preceding Federal Census to employ special counsel, providing special duties for such special counsel, providing that in any such county containing more than five hundred thousand (500,000) population according to the last preceding Federal Census, having a County Attorney whose primary duty it is to represent the State of Texas and the officials of such county in all civil matters, the employment of such special counsel shall be made only upon the written request of such County Attorney."

Senate Concurrent Resolution 64 on First Reading

Senate Schwartz moved that Senate Rule 114 and Section 5 of Article III of the State Constitution be suspended to permit his introducing at this time, a resolution, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—30

Aikin	Lane
Baker	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Owen
Crump	Parkhouse
Dies	Patman
Fuller	Ratliff
Gonzalez	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Smith
Kazen	Weinert
Krueger	Willis

Absent

Secrest

The following resolution was then introduced, read first time and referred to the committee indicated:

S. C. R. No. 64, Granting T. J. Poole Jr. et al. permission to sue the State of Texas.

Whereas, The State of Texas and the Republic of Mexico and State of Coahuila and Texas have heretofore issued grants and patents to the following described lands situated in Brazoria County, Texas, to-wit:

(1) The Calvin Sumrels (sometimes spelled Sumrall or Summervall)

Survey dated on or about August 28, 1849, to approximately 1476 acres of land described by metes and bounds and known as Abstract Number 368.

(2) The J. H. Gamble Survey dated on or about August 30, 1847, to approximately 1476 acres of land described by metes and bounds and known as Abstract Number 194.

(3) The William H. Butler Survey dated on or about July 3, 1847, to approximately 1476 acres of land described by metes and bounds and known as Abstract Number 154.

(4) The Rebecca A. Murrie Survey dated on or about February 11, 1886, to approximately 1280 acres of land described by metes and bounds and known as Abstract Number 587.

(5) The Parker Williams Grant dated December 13, 1832, to approximately 1107 acres of land described by metes and bounds and known as Abstract Number 137.

(6) The C. G., H. A., and H. O. Alsberry Survey dated on or about August 3, 1824, to approximately 1½ leagues of land described by metes and bounds and known as Abstract Number 4.

(7) The Solomon Blundell Survey dated on or about June 29, 1882, to approximately 1143.8 acres of land described by metes and bounds and known as Abstract Number 501; and,

Whereas, Certain portions of the above described Surveys are now submerged lands in Cow Trap Lake No. 1 and No. 2 and Cedar Lake; and

Whereas, Said submerged lands are located within the patent calls of the Surveys above described; and,

Whereas, No action has ever been instituted in the courts by the State to cancel said grants and patents or any portions thereof; and,

Whereas, T. J. Poole, Jr., Donald K. Poole, Mark K. Poole, Frances Poole Burke and husband, George Burke, Susan Poole Barbour and husband, J. Lane Barbour, Thomas Jeanne Keen, a widow, Fannie Louise Davant, a widow, Jessie Lea Davis and husband, Milam Davis, Kathryn Poole Burbank and husband, Reginald Burbank, Beatrice Elese Schultz and husband, James H. Schultz, James L. Ducroz, Charles A. Ducroz and Ethel Ducroz Wilson and husband, Harvey A. Wilson, through judgments of record and mesne conveyances from the sovereignty own interests in the above described Surveys; and,

Whereas, The Commissioner of the General Land Office and the School Land Board have heretofore advertised for and executed leases for mineral development on certain areas of said submerged lands in said Cow Trap Lake No. 1 and No. 2 and Cedar Lake within the patent calls of the Surveys above described, thereby treating said grants and patents as void as to the areas of submerged lands in Cow Trap Lake No. 1 and No. 2 and Cedar Lake located within the patent calls of the Surveys above described, thereby placing a cloud upon the title to the lands owned and claimed by the above named owners under mesne conveyances from the sovereignty; and,

Whereas, Said owners have heretofore attempted to enjoin the School Land Board and the Commissioner of the General Land Office from leasing, or attempting to lease, for mineral development, certain areas of said submerged land that had been patented by the State; and

Whereas, It was held by the court in the case of Giles, et al. vs. Poole, et al., opinion reported in 239 S. W. 2d 665, that such action was a suit against the State which could not be maintained unless the State consented to be sued; and,

Whereas, The School Land Board and Commissioner of the General Land Office have again called for nominations of land areas claimed to be owned by the State to be included as a portion of the lands to be leased by the School Land Board and Commissioner of the General Land Office for mineral development; and,

Whereas, Portions of said submerged lands in said Cow Trap Lake No. 1 and No. 2 and Cedar Lake, within the patent calls of the Surveys above described, have been nominated by prospective lessees; and,

Whereas, In all reasonable probability the School Land Board and Commissioner of the General Land Office will again advertise for, accept and execute leases for mineral development on portions of the hereinabove described lands, thereby casting a further cloud upon the title of the hereinabove named owners; and,

Whereas, Said above named owners are without a clear remedy to obtain a final determination of the ownership of said submerged lands located within the patent calls of the Surveys

above described unless the State gives its consent to be sued by said owners for the purpose of determining the true ownership of said submerged lands; and,

Whereas, A bona fide dispute exists between said above named owners and the School Land Board and the Commissioner of the General Land Office as to the ownership of said submerged lands located within the patent calls of said Surveys, which said dispute should be settled by appropriate decree by a court of competent jurisdiction; now, therefore, be it

Resolved, By the Senate of Texas with the House of Representatives of Texas concurring, that T. J. Poole, Jr., Donald K. Poole, Mark K. Poole, Frances Poole Burke and husband, George Burke, Susan Poole Barbour and husband, J. Lane Barbour, Thomas Jeanne Keen, a widow, Fannie Louise Davant, a widow, Jessie Lea Davis and husband, Milam Davis, Kathryn Poole Burbank and husband, Reginald Burbank, Beatrice Elsie Schultz and husband, James H. Schultz, James L. Ducroz, Charles A. Ducroz and Ethel Ducroz Wilson and husband, Harvey A. Wilson, be, and they are hereby granted permission to bring suit against the State of Texas, the School Land Board and the Commissioner of the General Land Office in any court of competent jurisdiction in Brazoria County, Texas, the county in which said lands are located, to recover judgment against the State of Texas, the School Land Board and the Commissioner of the General Land Office for title to and possession of the lands located within the patent calls of the Surveys above described, including the submerged lands in Cow Trap Lake No. 1 and No. 2 and Cedar Lake located within the patent calls of the Surveys above described, and to enjoin the School Land Board and the Commissioner of the General Land Office from leasing, or attempting to lease, for mineral development, or any other purpose, said above described lands, until the grants, patents and titles above described are determined to be of no effect by a judgment of a court of competent jurisdiction as to such portions of said submerged lands located within the patent calls of the Surveys above described, and service of citation for the purposes herein granted may be served upon the State of Texas, the School Land Board and the

Commissioner of the General Land Office by serving the Attorney General and the Commissioner of the General Land Office; and, be it further

Resolved, That such suit may be filed within two (2) years from the effective date of this resolution; and, be it further

Resolved, That it is understood that the purpose of this resolution is solely to grant permission to said above named owners to bring suit against the State of Texas, the School Land Board and the Commissioner of the General Land Office and no admission of ownership by the said above named owners is made by this resolution and all essential facts shall be proved as in other similar cases and either party may appeal from the judgment as in similar cases.

The resolution was read and was referred to the Committee on Jurisprudence.

Vote Reconsidered on Concurrence in House Amendments to Senate Bill 414

On motion of Senator Ratliff and by unanimous consent that portion of Senate Rule 60 that pertains to the number of days in which the motion to reconsider a vote may be taken so that the Senate may reconsider the vote by which the Senate concurred in the House amendments to S. B. No. 414 on Tuesday, May 2, 1961.

Senator Ratliff then moved to reconsider the vote by which the Senate concurred in the House amendments to S. B. No. 414.

There was no objection offered.

Senator Ratliff then moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill:

Senators Ratliff, Hardeman, Moffett, Rogers and Martin.

Senate Resolution 487

Senator Willis offered the following resolution:

Whereas, John Graves, a native son of Fort Worth and Tarrant County; graduate of the Fort Worth public school system and the William Marsh Rice University, where he was elected to membership in Phi Beta Kappa; wounded, disabled and retired Marine Corps captain; professor and author; has written "Goodbye to a River," recently published by The Curtis Publishing Company; and

Whereas, "Goodbye to a River" is a distinguished addition to the literature of Texas and America, combining the author's extensive knowledge of the traditions, anecdotes and lore of a section of our state rich in history with his provocative philosophy, his experiences in the great Texas outdoors, and his highly skilled and eminently readable writing style; and

Whereas, Leading literary critics in Texas and over the United States have widely acclaimed "Goodbye to a River," which is enjoying a wide sale over the nation, as a work of high quality and genius; and

Whereas, With the publication of "Goodbye to a River," John Graves joins a list of Texas authors including J. Frank Dobie, Mary Laswell, and others, who have brought great credit upon their state through their creative genius; now, therefore, be it

Resolved, That the Senate of Texas congratulate John Graves as a distinguished author and Texan and that he be invited to address the Texas Senate on May 16, 1961.

The resolution was read and was adopted.

The President announced the appointment of Senators Willis, Creighton and Martin to escort Mr. Graves to the President's Rostrum.

The President presented Senator Willis and he presented Mr. Graves to the Senate.

Mr. Graves addressed the Senate expressing appreciation for the resolution adopted by the Senate.

House Bill 1101 Ordered Not Printed

On motion of Senator Owen and by unanimous consent H. B. No. 1101 was ordered not printed.

Senate Bill 453 Ordered Not Printed

On motion of Senator Dies and by

unanimous consent S. B. No. 453 was ordered not printed.

Senate Bill 453 on Second Reading

On motion of Senator Dies and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S. B. No. 453, A bill to be entitled "An Act amending Subsection (a) of Section 15 of Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, compiled as Subsection (a) of Section 15 of Article 4477-1, Vernon's Annotated Civil Statutes, so as to grant authority to the State Department of Health to approve additional methods of disinfectants to be maintained in public swimming pools; and declaring an emergency."

The bill was read second time and passed to engrossment.

Senate Bill 453 on Third Reading

Senator Dies moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 453 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—30

Aikin	Lane
Baker	Martin
Calhoun	Moffett
Colson	Moore
Creighton	Owen
Crump	Parkhouse
Dies	Patman
Fuller	Ratliff
Gonzalez	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Smith
Kazen	Weinert
Krueger	Willis

Absent

Secret

The President then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

Conference Committee on House Bill 482

Senator Schwartz called from the President's table for consideration at this time, the request of the House for a Conference Committee to adjust the differences between the two Houses on H. B. No. 482 and moved that the request be granted.

The motion to grant the request prevailed.

Accordingly, the President announced the appointment of the following Conferees on the bill on the part of the Senate: Senators Schwartz, Creighton, Moore, Rogers and Parkhouse.

Senate Bill 353 on Third Reading

On motion of Senator Roberts and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

S. B. No. 353, A bill to be entitled "An Act amending Sections 1 and 2, Chapter 186, Acts of the 44th Legislature, Regular Session, 1935, as amended by Chapter 374, Acts of the 56th Legislature, Regular Session, 1959, codified as Article 1370a in Vernon's Texas Penal Code, prohibiting the running at large of livestock; limiting the meaning of the term 'running at large'; providing immunity from liability for injuring animals running at large except for gross negligence or wilful intent; authorizing the impounding of unattended animals under certain conditions and providing for their disposition; providing for enforcement; repealing all laws or parts of laws in conflict to the extent of such conflict; providing for severability; and declaring an emergency."

The bill was read the third time.

Senator Roberts offered the following amendment to the bill:

Amend Senate Bill 353, Section 1, subsections 1 and 2, by striking out such subsections and inserting in lieu thereof the following:

"Sec. 1. Any person owning or having responsibility for the control of any horse, mule, donkey, jack, jennet, hog, goat, sheep, or cattle of any type who knowingly permits or who, under

such facts and circumstances as would constitute notice of the fact that such animal or animals is or are running at large, permits such animal or animals to run at large shall be guilty of a misdemeanor and, upon conviction, shall be fined in any sum not exceeding Two Hundred Dollars (\$200). Each day that an animal is found to have been running at large shall constitute a separate offense.

"Sec. 2. The provisions of this Act shall in no way alter or affect any area wherein, under prior Acts of the Legislature of this State, local option prohibiting the running at large of cattle or other animals of any type shall have been adopted and shall presently be enforced."

The amendment was read and was adopted by the following vote:

Yeas—25

Aikin	Moffett
Calhoun	Moore
Colson	Owen
Crump	Parkhouse
Dies	Ratliff
Gonzalez	Reagan
Hardeman	Roberts
Hazlewood	Rogers
Herring	Schwartz
Kazen	Smith
Krueger	Weinert
Lane	Willis
Martin	

Nays—2

Creighton	Patman
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Absent

Baker	Hudson
Fuller	Secrest

S. B. No. 353 was finally passed by the following vote:

Yeas—16

Aikin	Parkhouse
Calhoun	Ratliff
Fuller	Reagan
Hardeman	Roberts
Hudson	Schwartz
Kazen	Secrest
Moore	Weinert
Owen	Willis

Nays—14

Colson	Dies
Creighton	Gonzalez
Crump	Hazlewood

Herring
Krueger
Lane
Martin

Moffett
Patman
Rogers
Smith

Absent

Baker

(Senator Martin in the Chair.)

Senate Bill 432 on Second Reading

On motion of Senator Herring and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S. B. No. 432, A bill to be entitled "An Act amending Article 342-104 of the Texas Banking Code of 1943, same being Acts of the Forty-eighth Legislature, Chapter 97, by changing the qualifications of certain members of the Finance Commission; and declaring an emergency."

The bill was read second time and passed to engrossment.

Senate Bill 432 on Third Reading

Senator Herring moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 432 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—30

Aikin
Calhoun
Colson
Creighton
Crump
Dies
Fuller
Gonzalez
Hardeman
Hazlewood
Herring
Hudson
Kazen
Krueger
Lane

Martin
Moffett
Moore
Owen
Parkhouse
Patman
Ratliff
Reagan
Roberts
Rogers
Schwartz
Secrest
Smith
Weinert
Willis

Absent

Baker

The Presiding Officer then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—30

Aikin
Baker
Calhoun
Colson
Creighton
Crump
Dies
Fuller
Gonzalez
Hazlewood
Herring
Hudson
Kazen
Krueger
Lane

Martin
Moffett
Moore
Owen
Parkhouse
Patman
Ratliff
Reagan
Roberts
Rogers
Schwartz
Secrest
Smith
Weinert
Willis

Nays—1

Hardeman

Message from the House

Hall of the House of Representatives
Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

S. C. R. No. 61, Recalling Senate Bill No. 414 from the Governor.

S. C. R. No. 63, Requesting the return of S. C. R. No. 42 from the Governor.

House has appointed the following Conference Committee on S. B. No. 100: Watson, Chairman; Chapman, Cook, Cory, Sandahl.

H. B. No. 770, A bill to be entitled "An Act to amend Section 1 of Article 2.07, Insurance Code (Section 1 of Article 2.07 of Chapter 491, Acts of the 52nd Legislature, Regular Session (1951), page 868, as amended by Acts of 1957, 55th Legislature, Page 87, Chapter 41, Section 1) providing that the capital stock of a domestic insurance company with a nominal or par value shall be divided into shares of not less than one dollar (\$1.00) each, and not more than one hundred dollars (\$100.00) each, providing that at least fifty percent of the authorized shares with a nominal or par value shall be in good faith subscribed and paid for, and further providing certain requirements essential to the

issuance and sale of stock in various situations and the reports to be filed thereon; and to amend paragraph (a), (b), (c) and (d) of Article 3.02a, Insurance Code (Acts 1955, 54th Legislature, Page 916, Chapter 363, Section 4) providing that the capital stock of a domestic life insurance company with a nominal or par value shall be divided into shares of not less than one dollar (\$1.00) each, and nor more than one hundred dollars (\$100.00) each, providing that at least fifty percent of the authorized shares shall be in good faith subscribed and paid for; and further providing certain requirements essential to the issuance and sale of such stock and the reports to be filed thereon; repealing conflicting laws and parts of laws to the extent of such conflict; providing for a severability clause; and declaring an emergency."

H. B. No. 332, A bill to be entitled "An Act amending Chapter 357, Acts of the 53rd Leg., Regular Session, 1953; changing the name of the Board of Water Engineers to the Texas Water Commission and prescribing certain duties, powers and functions thereof; providing for the appointment of a Chief Engineer and prescribing his duties, powers and functions; enacting other provisions in regard to the administration of the water resources of the State; providing a saving clause; and declaring an emergency."

H. B. No. 377, A bill to be entitled "An Act amending Sections 101, 107 and 139 of Chapter 25, Acts of the 39th Legislature, Regular Session, 1925, which are codified as Articles 7880-101, 7880-107, and 7880-139, Revised Civil Statutes of Texas, by lowering the discount rate on certain water district bonds; providing maintenance tax elections for certain districts; providing authority of Board of Water Engineers to inspect certain district projects; containing a severability clause; and declaring an emergency."

The House has concurred in Senate amendments to H. J. R. No. 70 by vote of 130 ayes, 4 noes.

The House has concurred in Senate amendments to House Bill No. 245 by vote of 126 ayes, 7 noes.

The House has concurred in Senate amendments to House Bill No. 566 by vote of 137 ayes, 0 noes.

The House has concurred in Senate amendments to House Bill No. 721 by vote of 132 ayes, 0 noes.

The House has concurred in Senate amendments to House Bill No. 761 by vote of 137 ayes, 0 noes.

The House has concurred in Senate amendments to House Bill No. 846 by vote of 132 ayes, 0 noes.

The House has concurred in Senate amendments to House Bill No. 1063 by vote of 133 ayes, 0 noes.

The House has concurred in Senate amendments to H. C. R. No. 38 by non-record vote.

The House has refused to concur in Senate amendments to House Bill No. 214 and has requested the appointment of a Conference Committee to consider the differences between the two Houses.

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Senate Bill 450 on Second Reading

On motion of Senator Reagan and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S. B. No. 450, A bill to be entitled "An Act amending Article 174 of the Revised Civil Statutes of Texas, 1925, relating to the ownership of land in Texas by corporations; repealing laws in conflict; containing a savings clause; and declaring an emergency."

The bill was read second time and passed to engrossment.

Senate Bill 450 on Third Reading

Senator Reagan moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 450 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—28

Aikin	Gonzalez
Baker	Hardeman
Calhoun	Hazlewood
Colson	Herring
Crump	Hudson
Dies	Kazen
Fuller	Krueger

Lane
Martin
Moffett
Owen
Parkhouse
Patman
Ratliff

Reagan
Roberts
Schwartz
Secrest
Smith
Weinert
Willis

Nays—2

Creighton

Rogers

Absent

Moore

The Presiding Officer then laid the bill before the Senate on its third reading and final passage.

The bill was read third time and was passed.

Record of Vote

Senator Creighton asked to be recorded as voting "Nay" on the final passage of S. B. No. 450.

House Bill 1035 Ordered Not Printed

On motion of Senator Schwartz and by unanimous consent H. B. No. 1035 was ordered not printed.

House Bill 600 Ordered Not Printed

On motion of Senator Schwartz and by unanimous consent H. B. No. 600 was ordered not printed.

House Bill 736 Ordered Not Printed

On motion of Senator Schwartz and by unanimous consent H. B. No. 736 was ordered not printed.

Senate Bill 132 on Second Reading

Senator Crump asked unanimous consent to suspend the regular order of business and take up S. B. No. 132 for consideration at this time.

There was objection.

Senator Crump then moved to suspend the regular order of business and take up S. B. No. 132 for consideration at this time.

The motion prevailed by the following vote:

Yeas—24

Aikin
Baker
Calhoun

Colson
Creighton
Crump

Dies
Fuller
Gonzalez
Hardeman
Hazlewood
Kazen
Lane
Martin
Moffett

Moore
Parkhouse
Patman
Reagan
Roberts
Schwartz
Secrest
Smith
Weinert

Nays—7

Herring
Hudson
Krueger
Owen

Ratliff
Rogers
Willis

The Presiding Officer laid before the Senate on its second reading and passage to engrossment:

S. B. No. 132, A bill to be entitled "An Act providing for the licensing and regulation of all persons engaged in the business of Structural Pest Control to be administered by the Texas State Department of Health; providing for an Advisory Council; defining terms used; providing for exceptions; requiring license; etc., and declaring an emergency."

The bill was read the second time.

Senator Crump offered the following Committee Amendment to the bill:

Amend Senate Bill No. 132 by striking out all below the enacting clause and substituting in lieu thereof the following:

Section 1. Definitions.

(a) As used in this Act, except where the context otherwise requires, the provisions of this section shall govern the construction of this Act:

(b) The term "person" means any individual, firm, partnership, corporation, association or other organization, any combination thereof, or any type of business entity.

(c) "Household" means any completed structure or any structure in any state of construction and its contents.

(d) "Operator" or "structural pest control operator" means any person registered under the provisions of this Act who engages in or offers to engage in pest control work or business.

(e) "Commissioner" or "Department" shall mean the Commissioner of Agriculture of this State or his designated representative.

(f) Any person as defined in this Act shall be deemed "engaged in the business of Structural Pest Control," if he engages in, offers to engage in, advertises for, solicits, or performs any of the following: identification of infestations or the making of any inspection or inspections for the purpose of identifying or attempting to identify such infestations of wood destroying pests or organisms such as termites or ants, or other pests such as moths, bedbugs, cockroaches, ants, silverfish and other like pests which may infest a household or other structures in connection therewith; of the making of inspection reports, recommendations, estimates, or bids, whether oral or written, with respect to such infestations, or the making of contracts, or the submitting of bids for, or the performance of any work including the making of structural repairs or replacements for the purpose of preventing, controlling, or eliminating such infestations or the use of insecticides, pesticides, rodenticides, fumigants or allied chemicals or substances or mechanical devices for the purpose of eliminating, exterminating, controlling, or preventing of such infestations of households or other structures, including railroad cars, ships, docks, trucks, airplanes, or the contents thereof, and receive therefor compensation directly or indirectly.

Section 2. (a) It shall be the duty of all persons now engaged in the business of performing structural pest control services or doing termite or wood destroying organism control work in this State, or who shall hereafter engage in such work or profession, to register with the Commissioner of Agriculture of the State of Texas, as hereinafter provided.

(b) Registration shall be on forms provided by the Commissioner, or under his direction, and shall require all persons registering to name their business address, their home address, number of years engaged in pest control business, equipment owned, leased or rented to be used by registrant, and such other information as the Commissioner may deem necessary.

(c) All firms, corporations or persons now or hereafter engaged in the business of structural pest control shall file with the Commissioner an application for registration, accompanied by a filing fee of Ten Dollars (\$10.00), and upon receipt of said

application, accompanied by the filing fee and the information required or requested by the Commissioner, the Commissioner shall issue a certificate of registration for the firm, corporation or person to engage in the business of structural pest control, and said certificate shall be in force for a period of one year from and after 90 days after the effective date of this Act. Said certificate shall not be transferable nor assignable in whole or in part.

(d) Any firm, corporation or person engaged in the business of structural pest control on the effective date of this Act shall have sixty (60) days from the effective date of this Act within which to file an application for registration, and from and after 90 days after the effective date of this Act, it shall be unlawful for any person, firm or corporation to engage in the business of structural pest control without having a certificate of registration under the provisions provided in this Act.

(e) Within ninety (90) days after the effective date of this Act, all mobile equipment and vehicles operating under the authority of the certificate of registration that are used in structural pest control work shall be permanently marked on both sides thereof with letters and numbers a minimum of one and one-half inches (1½") in height as follows: TEXAS PEST CONTROL CERTIFICATE OF REGISTRATION NO., and the name of such person, firm or corporation.

(f) The Commissioner of Agriculture shall maintain or cause to be maintained a roster showing the name, address, date of registration, and such other pertinent information as he may deem necessary, and such roster shall be subject to inspection at reasonable times by interested citizens, law enforcement officers, and representatives of state agencies. Anyone desiring a list of individuals registered under the provisions of this Act may obtain same by paying a fee as fixed by the Commissioner of Agriculture.

(g) The annual renewal fee for each certificate of registration shall be Ten Dollars (\$10.00) which shall accompany the application of any firm, person or corporation desiring to renew its license, and the failure to submit an application for renewal and pay the fee therefor will automatically

cancel the certificate of registration theretofore issued.

(h) The Commissioner of Agriculture may suspend, revoke or refuse to renew any certificate of registration after due notice and public hearing where the Commissioner of Agriculture finds that any holder of a certificate of registration:

(1) Has been convicted of a felony involving moral turpitude under the laws of this or any other state or of the United States after effective date of this Act; or

(2) Has made material misrepresentations for the purpose of obtaining business; or

(3) Has knowingly used substances or materials which were not suitable or reasonably safe for structural pest control purposes; or

(4) Has failed to comply with the requirements of this Act.

(i) Within thirty (30) days after the Commissioner of Agriculture has suspended, revoked or refused to renew a certificate of registration, the affected person may appeal such ruling to the District Court of the County in which the commission of the act occurred and upon which the Commissioner relied to suspend, revoke or refuse to renew the certificate of registration.

Section 3. This Act shall not apply to any person doing work on his own property or to any regular employee of any person, firm or corporation doing work on the property of such person, firm or corporation under the direct supervision of the person who owns or has charge of the property on which the work is being done.

Section 4. The provisions of this Act shall not apply to agencies of the Federal, State, County or Municipal governments, or to agents thereof in the performance of official duties.

Section 5. Any person violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than \$500 or imprisonment for not more than six (6) months, or both. Complaints may be filed by the Commissioner of Agriculture or his duly authorized representative, an inspector for the State Health Department of the State of Texas, or any law enforcement agency within the State, or a citizen who has been aggrieved, and such complaints shall be

filed with the County Attorney of the County in which the violation occurred.

Section 6. All money received by the Commissioner of Agriculture through the administration of this Act shall be paid by him to the State Treasurer who shall deposit said money to the account of the Commissioner of Agriculture, Pest Control Enforcement Fund, which said account shall be a continuing fund and shall be used in the administration of this Act, and so much thereof as may be necessary is hereby appropriated to the State Department of Agriculture to be expended for the purposes specified in this Act. This appropriation shall not affect any other appropriations heretofore or hereafter made to the State Department of Agriculture, but shall be an addition thereto for the biennium ending August 31, 1963. Thereafter, any appropriation shall be as fixed by the biennial appropriation bill.

Section 7. If any clause, sentence, paragraph, section or part of this Act shall be for any reason be declared unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, sub-section, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases be declared unconstitutional.

Section 8. The fact that there is no law or requirements regulating structural pest control operators and that the proper registration of individuals practicing the occupation or vocation would be for the best interest and welfare of the people of the State, and due to the busy calendar of the Legislature, create an imperative public necessity that the Constitutional Rule requiring that bills be read on three several days in each house be suspended, and said rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

The Committee Amendment was read.

Senator Owen offered the following amendment to the pending committee amendment:

Amend Committee Amendment No. 1 to S. B. 132, Sec. 2(i), page 2,

printed copy, by adding in line 53 between the words "County" and "in" as follows:

and shall be entitled to and given a trial de novo as in appeals from the Justice Court to the County Court and the substantial evidence rule shall not apply.

**HARDEMAN
OWEN**

The amendment was adopted.

Senator Crump offered the following amendment to the pending committee amendment:

Amend Committee Amendment No. 1 of Senate Bill No. 132 by striking out the word "license" in Section No. 1 (g) of line 34, page 2, of the printed bill and substituting in lieu thereof the words "certificate of registration."

The amendment was adopted.

Senator Owen offered the following amendment to the pending committee amendment:

Amend S. B. No. 132, Sec. 2 (4) (i), page 2, by inserting the following: "failed or refused to issue a certificate" between "has" and "suspended" on line 51, page 2, of the printed bill.

The amendment was adopted.

The committee amendment as amended was then adopted.

On motion of Senator Crump and by unanimous consent the caption was amended to conform to the body of the bill as amended.

Question—Shall S. B. No. 132 as amended be passed to engrossment?

(President in the Chair.)

Special Notice on House Bill 12

Senator Patman gave notice that he would on tomorrow move to suspend the rules to consider H. B. No. 12.

Report of Standing Committee

Senator Aikin by unanimous consent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred H. B. No. 1054, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Recess

On motion of Senator Hardeman the Senate at 11:48 o'clock a.m. took recess until 2:00 o'clock p.m. today.

After Recess

The President called the Senate to order at 2:00 o'clock p.m. today.

Resolution Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled resolution:

H. C. R. No. 38, Authorizing the erection of a monument to men and women who served in World War I to be placed on Capitol Grounds.

Leave of Absence

Senator Martin was granted leave of absence for today on account of important business on motion of Senator Moffett.

House Bills on First Reading

The following bills received from the House were read the first time and referred to the committees indicated:

H. B. No. 398, To the Committee on Transportation.

H. B. No. 769, To the Committee on Insurance.

H. B. No. 254, To the Committee on Public Health.

H. B. No. 770, To the Committee on Insurance.

H. B. No. 951, To the Committee on Jurisprudence.

H. B. No. 912, To the Committee on Counties, Cities and Towns.

H. B. No. 1102, To the Committee on Water and Conservation.

H. B. No. 1067, To the Committee on Jurisprudence.

H. B. No. 1036, To the Committee on Jurisprudence.

H. B. No. 998, To the Committee on State Affairs.

H. B. No. 971, To the Committee on Privileges and Elections.

H. B. No. 840, To the Committee on Counties, Cities and Towns.

H. B. No. 377, To the Committee on Water and Conservation.

H. B. No. 810, To the Committee on Banking.

H. B. No. 744, To the Committee on State Affairs.

H. B. No. 712, To the Committee on Jurisprudence.

H. B. No. 66, To the Committee on Jurisprudence.

H. B. No. 232, To the Committee on Jurisprudence.

H. B. No. 249, To the Committee on State Affairs.

H. B. No. 262, To the Committee on State Affairs.

H. B. No. 324, To the Committee on Jurisprudence.

H. B. No. 361, To the Committee on Jurisprudence.

H. B. No. 423, To the Committee on State Affairs.

H. B. No. 365, To the Committee on Jurisprudence.

H. B. No. 373, To the Committee on Jurisprudence.

H. B. No. 379, To the Committee on Jurisprudence.

H. B. No. 397, To the Committee on Counties, Cities and Towns.

H. B. No. 441, To the Committee on Jurisprudence.

H. B. No. 463, To the Committee on State Affairs.

H. B. No. 471, To the Committee on State Affairs.

H. B. No. 477, To the Committee on Jurisprudence.

H. B. No. 502, To the Committee on Jurisprudence.

H. B. No. 630, To the Committee on Water and Conservation.

H. B. No. 676, To the Committee on Counties, Cities and Towns.

H. B. No. 702, To the Committee on Water and Conservation.

H. B. No. 913, To the Committee on Game and Fish.

H. B. No. 1077, To the Committee on Education.

Report of Standing Committee

Senator Krueger by unanimous consent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred H. B. No. 143, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

KRUEGER, Chairman.

House Bill 143 Ordered Not Printed

On motion of Senator Moore and by unanimous consent H. B. No. 143 was ordered not printed.

Senate Bill 473 on Second Reading

Senator Lane asked unanimous consent to suspend the regular order of business and take up S. B. No. 473 for consideration at this time.

There was objection.

Senator Lane then moved to suspend the regular order of business and take up S. B. No. 473 for consideration at this time.

The motion prevailed by the following vote:

Yeas—27

Aikin	Hazlewood
Baker	Herring
Calhoun	Kazen
Colson	Krueger
Creighton	Lane
Crump	Moffett
Dies	Moore
Fuller	Owen
Gonzalez	Parkhouse
Hardeman	Patman

Ratliff	Secrest	Absent
Reagan	Smith	Weinert
Roberts	Willis	Absent—Excused
Schwartz		
Nays—1		
Rogers		Martin
Absent		The President then laid the bill before the Senate on its third reading and final passage.
Hudson	Weinert	The bill was read third time and was passed by the following vote:
Absent—Excused		Yeas—29
Martin		Aikin Lane
The President laid before the Senate on its second reading and passage to engrossment:		Baker Moffett
S. B. No. 473, A bill to be entitled "An Act amending Art. 6066, RCS of Texas, 1925, as amended, so as to authorize transfer of monies collected pursuant to the provisions of Article 6060, RCS of Texas, 1925, as amended, for the purpose of paying for the administration of the conservation laws of this State relating to the production of gas, which includes condensates and distillates, making other provisions thereto; and declaring an emergency."		Calhoun Moore
The bill was read second time and was passed to engrossment.		Colson Owen
Senate Bill 473 on Third Reading		Creighton Parkhouse
Senator Lane moved that the Constitutional Rule and Senate Rule 32 requiring bills to be read on three several days be suspended and that S. B. No. 473 be placed on its third reading and final passage.		Crump Patman
The motion prevailed by the following vote:		Dies Ratliff
Yeas—28		Fuller Reagan
Aikin Krueger		Gonzalez Roberts
Baker Lane		Hardeman Rogers
Calhoun Moffett		Hazlewood Schwartz
Colson Moore		Herring Secrest
Creighton Owen		Hudson Smith
Crump Parkhouse		Kazen Willis
Dies Patman		
Fuller Ratliff		Absent
Gonzalez Reagan		Weinert
Hardeman Roberts		Absent—Excused
Hazlewood Schwartz		Martin
Herring Secrest		Reports of Standing Committees
Hudson Smith		Senator Kazen by unanimous consent submitted the following report:
Kazen Willis		Austin, Texas, May 16, 1961.
Nays—1		Hon. Ben Ramsey, President of the Senate.
Rogers		Sir: We, your Committee on Legislative, Congressional and Judicial Districts, to whom was referred H. B. No. 349, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.
		KAZEN, Chairman.
		Senator Aikin by unanimous consent submitted the following report:
		Austin, Texas, May 16, 1961.
		Hon. Ben Ramsey, President of the Senate.
		Sir: We, your Committee on Counties, Cities and Towns, to whom was

referred H. B. No. 840, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred H. B. No. 284, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Senator Krueger by unanimous consent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred H. B. No. 1045, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

KRUEGER, Chairman.

House Bill 840 Ordered Not Printed

On motion of Senator Moore and by unanimous consent H. B. No. 840 was ordered not printed.

Report of Standing Committee

Senator Krueger by unanimous consent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred H. B. No. 687, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

KRUEGER, Chairman.

House Bill 687 Ordered Not Printed

On motion of Senator Colson and by unanimous consent H. B. No. 687 was ordered not printed.

Senate Bill 132 on Second Reading

The resident laid before the Senate as pending business S. B. No. 132 on its passage to engrossment. (The bill having been read the second time this morning.)

Question—Shall S. B. No. 132 as amended be passed to engrossment?

Senator Crump offered the following amendment to the bill:

Amend Committee Amendment No. 1 of Senate Bill 132 by striking out paragraph (d) in Section 2 and substituting in lieu thereof the following paragraph:

(d) Within 90 days after the effective date of this Act, it shall be unlawful for any person, firm or corporation to engage in the business of structural pest control without having a certificate of registration under the provisions provided in this Act.

The amendment was adopted.

On motion of Senator Crump and by unanimous consent the caption was amended to conform to body of the bill as amended.

The bill as amended was passed to engrossment.

Record of Votes

Senators Hardeman, Herring and Hudson asked to be recorded as voting "Nay" on the passage of S. B. No. 132 to engrossment.

Motion to Place

Senate Bill 132 on Third Reading

Senator Crump moved that Senate Rule 32 and the Constitutional Rule requiring bills to be read on three several days be suspended and that S. B. No. 132 be placed on its third reading and final passage.

The motion was lost by the following vote (not receiving four-fifths vote of the Members present):

Yeas—19

Aikin	Krueger
Baker	Moffett
Calhoun	Moore
Creighton	Parkhouse
Crump	Patman
Fuller	Ratliff
Hazlewood	Reagan
Kazen	Roberts

Schwartz Smith
Secrest

Nays—8

Dies Hudson
Gonzalez Owen
Hardeman Rogers
Herring Willis

Absent

Colson Weinert
Lane

Absent—Excused

Martin

Message from the House

Hall of the House of Representatives,
Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the
Senate.

Sir: I am directed by the House to
inform the Senate that the House has
passed the following:

H. B. No. 892, A bill to be entitled
"An Act to eradicate so-called private
clubs operated as a subterfuge for
the sale of liquor by the drink, and
to assure strict compliance for opera-
tion of bona fide private clubs; pro-
viding certain fees and taxes for op-
eration of private clubs to the credit
of the General Revenue Fund; provid-
ing penalties; and declaring an emer-
gency."

H. B. No. 155, A bill to be entitled
"An Act relating to filing fees and
expenses for primary elections;
amending Article 193 as amended, and
Article 186 as amended, of the Elec-
tion Code of Texas, 1951; repealing
Article 194 of the Election Code of
Texas, 1951; and declaring an emer-
gency."

The House refused to concur in
Senate amendments to House Bill No.
995 and has requested the appoint-
ment of a Conference Committee to
consider the differences between the
two Houses.

H. B. No. 1090, A bill to be entitled
"An Act to fix and make certain the
amount of compensation to be paid
from county funds by counties hav-
ing a population of one million two
hundred thousand (1,200,000) or
more, according to the last preced-
ing Federal census, as compensation

to district and criminal district judges
in such counties, providing for the
compensation of substitute judges;
and declaring an emergency." (With
engrossed rider.)

H. B. No. 238, A bill to be entitled
"An Act to provide that a tax col-
lector may issue to certain people
under certain circumstances a certi-
ficate showing that neither their land
nor themselves are liable for delin-
quent taxes and that the liability for
such taxes is thereafter a personal
liability of the person under whom
the taxes became delinquent and
thereby making a court action to ac-
complish the same thing unnecessary;
requiring the tax collector to issue
an affidavit certifying that there has
been no fraud or collusion; and de-
claring an emergency."

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Reports of Standing Committees

Senator Parkhouse by unanimous
consent submitted the following re-
port:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the
Senate.

Sir: We, your Committee on Water
and Conservation, to whom was re-
ferred H. B. No. 1102, have had the
same under consideration, and we are
instructed to report it back to the
Senate with the recommendation that
it do pass, and be printed.

PARKHOUSE, Chairman.

Senator Aikin by unanimous con-
sent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the
Senate.

Sir: We, your Committee on Coun-
ties, Cities and Towns, to whom was
referred H. B. No. 676, have had the
same under consideration, and we are
instructed to report it back to the
Senate with the recommendation that
it do pass, and be printed.

AIKIN, Chairman.

Senate Concurrent Resolution 65 on First Reading

Senator Herring moved that Sen-

ate Rule 114 and Section 5 of Article III of the State Constitution be suspended to permit his introducing at this time, a resolution, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—28

Aikin	Krueger
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hardeman	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Willis

Absent

Lane Weinert

Absent—Excused

Martin

The following resolution was then introduced, read first time and referred to the committee indicated:

S. C. R. No. 65, Granting Connecticut General Life Insurance Company permission to sue the State of Texas.

Whereas, Connecticut General Life Insurance Company is a Connecticut corporation doing business in the State of Texas in accordance with the laws of the State of Texas; and

Whereas, Pursuant to Article 4768 of Vernon's Texas Statutes, now Article 3.36 of the Texas Insurance Code, and Article 4769 of Vernon's Texas Statutes, the Connecticut General Life Insurance Company paid gross premium taxes in the amount certified by the State Board of Insurance or the Commissioner of Insurance to the State Treasurer for the years 1952 through 1957 and 1959; and

Whereas, Such amounts so certified to the State Treasurer by the State Board of Insurance or the Commissioner of Insurance were in error and were erroneously collected from the Connecticut General Life Insurance Company because of such error; and

Whereas, Connecticut General Life Insurance Company desires to sue the

State of Texas for the recovery and refund of the taxes so erroneously collected from Connecticut General Life Insurance Company; now, therefore, be it

Resolved, by the Senate of the State of Texas and the House of Representatives concurring, That Connecticut General Life Insurance Company be, and it is hereby, granted permission to bring suit against the State of Texas for recovery of occupation taxes erroneously recovered from Connecticut General Life Insurance Company for the years 1952-57 and 1959; and service of citation for the purposes herein granted may be served upon the State of Texas by serving the Attorney General, the State Treasurer, the State Board of Insurance, and the Commissioner of Insurance; and be it further

Resolved, That such suit may be filed within two (2) years from the adoption date of this resolution and be it further

Resolved, That the sole purpose of this resolution is to grant permission to the aforesaid Connecticut General Life Insurance Company to bring suit against the State of Texas and no admission of liability of the State or of any fact is made in any way by the passage of this resolution, and it is specifically provided that the facts upon which said Connecticut General Life Insurance Company seeks to recover must be proved in Court as in other civil cases.

The resolution was read and was referred to the Committee on Jurisprudence.

House Bills on First Reading

The following bills received from the House, were read the first time and referred to the committee indicated:

H. B. No. 469, To the Committee on Jurisprudence.

H. B. No. 279, To the Committee on Jurisprudence.

H. B. No. 1090, To the Committee on Jurisprudence.

Senate Joint Resolution 25 on Second Reading

Senator Schwartz asked unanimous consent to suspend the regular order of business and take up S. J. R. No. 25 for consideration at this time.

There was objection.

Senator Schwartz then moved to suspend the regular order of business and take up S. J. R. No. 25 for consideration at this time.

The motion prevailed by the following vote:

Yeas—26

Aikin	Krueger
Baker	Moffett
Calhoun	Moore
Colson	Owen
Creighton	Parkhouse
Crump	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Rogers
Herring	Schwartz
Hudson	Secrest
Kazen	Willis

Nays—1

Hardeman

Absent

Lane	Weinert
Smith	

Absent—Excused

Martin

The President laid before the Senate on its second reading and passage to engrossment:

S. J. R. No. 25, Proposing an Amendment to Section 49-b, Article III of the Constitution of Texas permitting the resale of forfeited lands of the Veterans' Land Fund to be sold to such purchasers in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law or as may hereafter be provided by law; providing for an election and the issuance of a proclamation therefor.

The resolution was read the second time.

Senator Schwartz offered the following amendment to the resolution:

Amend S. J. R. 25 by deleting Section 1 and Section 2 and substituting in lieu thereof the following sections:

"Section 1. That Section 49-b, Article III of the Constitution of Texas,

be amended by adding thereto the following:

The foregoing notwithstanding, any lands in the Veterans' Land Fund which have been first offered for resale to Veterans and which have not been sold may be resold to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law, or as may hereafter be provided by law.'

This Amendment shall become effective upon its adoption."

"Section 2. The foregoing Constitutional Amendment shall be submitted to a vote of the qualified electors of this State at an election to be held throughout the State of Texas on the first Tuesday after the first Monday in November, 1962, at which election all ballots shall have printed thereon the following:

'FOR the Amendment to Section 49-b of Article III of the Constitution of Texas by adding thereto a provision authorizing the resale of lands of the Veterans' Land Fund remaining unsold after having been first offered for sale to Veterans, to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law, or as may hereafter be provided by law'

'AGAINST the Amendment to Section 49-b of Article III of the Constitution of Texas by adding thereto a provision authorizing the resale of lands of the Veterans' Land Fund remaining unsold after having been first offered for sale to Veterans, to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law, or as may hereafter be provided by law.'

If it appears from the returns of said election that a majority of the votes cast were in favor of said Amendment, the same shall become a part of the State Constitution and be effective from the date set forth in said Amendment, and the Governor shall issue a proclamation in keeping therewith."

The amendment was adopted.

Senator Schwartz offered the following amendment to the resolution:

Amend S. J. R. 25 by deleting the caption and substituting in lieu thereof the following:

"A Joint Resolution, Proposing an Amendment to Section 49-b, Article III of the Constitution of Texas permitting the resale of lands of the Veterans' Land Fund remaining unsold after having been first offered for sale to Veterans, to be sold to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now provided by law or as may hereafter be provided by law, providing for an election and the issuance of a proclamation therefor."

The amendment was adopted.

The resolution as amended was passed to engrossment.

Record of Vote

Senator Hardeman asked to be recorded as voting "Nay" on the passage of S. J. R. No. 25 to engrossment.

Senate Joint Resolution 25 on Third Reading

Senator Schwartz moved that Senate Rule 32 and the Constitutional Rule requiring resolutions to be read on three several days be suspended and that S. J. R. No. 25 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—27

Aikin	Moffett
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Willis
Krueger	

Nays—1

Hardeman

Absent

Lane

Weinert

Absent—Excused

Martin

The President then laid the resolution before the Senate on its third reading and final passage.

The resolution was read third time and passed by the following vote:

Yeas—28

Aikin	Moffett
Baker	Moore
Calhoun	Owen
Colson	Parkhouse
Creighton	Patman
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Gonzalez	Rogers
Hazlewood	Schwartz
Herring	Secrest
Hudson	Smith
Kazen	Weinert
Krueger	Willis

Nays—1

Hardeman

Absent

Lane

Absent—Excused

Martin

Reports of Standing Committees

Senator Colson by unanimous consent submitted the following report:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Public Health, to whom was referred H. B. No. 254, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

COLSON, Chairman.

Senator Aikin by unanimous consent submitted the following reports:

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred H. B. No. 527, have had the

same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: We, your Committee on Counties, Cities and Towns, to whom was referred S. B. No. 476, have had the same under consideration, and we are instructed to report it back to the Senate with the recommendation that it do pass and be printed.

AIKIN, Chairman.

House Bill 527 Ordered Not Printed

On motion of Senator Gonzalez and by unanimous consent H. B. No. 527 was ordered not printed.

Message from the Governor

The following message received from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas,
May 15, 1961.

Hon. Ben Ramsey,
Lieutenant Governor of Texas
Austin, Texas

Dear Governor Ramsey:

I have just been notified by the sponsor that a Concurrent Resolution has passed both the Senate and House of Representatives requesting that S. C. R. No. 42 be returned to the Senate for corrections. Pursuant to that Resolution, I am returning the resolution herewith.

Respectfully submitted,
PRICE DANIEL

Message from the House

Hall of the House of Representatives,
Austin, Texas,
May 16, 1961.

Hon. Ben Ramsey, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a conference committee on Senate Bill No. 414.

House has appointed the following

conferees: Rosson, Chairman; Connell, Ehrle, Quilliam and Read.

House has appointed the following conferees on H. B. No. 214: Grover, Chairman; Cole of Harris, Whitfield, Garrison, Floyd.

Respectfully submitted,

DOROTHY HALLMAN,
Chief Clerk, House of Representatives

Meeting of Conference Committee on Senate Bill 1

On motion of Senator Roberts and by unanimous consent the Conference Committee on S. B. No. 1 was granted permission to meet while the Senate was in session.

Bills and Resolutions Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled bill and resolutions:

H. B. No. 32, Concerning the payment of aid and compensation to persons who have paid fines or served sentences for crimes of which they are not guilty; and declaring an emergency.

H. B. No. 138, A bill to be entitled "An Act to adopt and establish certain miscellaneous statutory provisions applicable to private corporations, whether for profit or not for profit; to provide certain special laws applicable to veteran, educational, cemetery, detective, and certain railroad corporations; to provide restrictions upon the acquisition of land by corporations and to impose penalties for violations; etc., and declaring an emergency."

H. B. No. 140, A bill to be entitled "An Act to amend the Texas Business Corporation Act, 1955, 54th Legislature, Chapter 64; said Act being amended by amending Section C of Article 2.29; by amending Article 2.30 by adding a new Section B; by amending said Act by adding a new Article 4.14; and by amending Section A of Article 8.03; and declaring an emergency."

H. B. No. 163, A bill to be entitled "An Act amending Section 1 of Chapter 355, Acts of the 52nd Legislature, 1951 (Section 1 of Article 1969a-2, Vernon's Texas Civil Statutes), relating to performance of duties of

the County Judge by the Judge of any County Court at Law in certain counties, by changing the counties to which the Act is applicable from counties having a population of less than 600,000 inhabitants to counties having a population of less than 700,000 inhabitants, according to the last preceding or any future Federal Census; and declaring an emergency."

H. B. No. 243, Amending Article 43 of the Code of Criminal Procedure of Texas, 1925, to require the sheriff of each county to report to the district or county attorney each month as to all prisoners in his custody and the authority by which he detains them; and declaring an emergency.

H. B. No. 261, Concerning the adoption and filing of rules and regulations of State administrative agencies authorized by law to make rules and regulations; and declaring an emergency."

H. B. No. 495, A bill to be entitled "An Act to amend Article 3.40 of the Insurance Code (Acts of 1951, 52nd Legislature, as amended by the Acts of 1955, 54th Legislature, Page 916, Chapter 363, Section 13, as further amended by Acts of 1959, 56th Legislature, Page 890, Chapter 411, Section 4) pertaining to investments by life, health or accident insurance companies in real estate by adding to said Article a paragraph permitting such companies to acquire, secure, retain, hold and convey production payments subject to restrictions and limitations; repealing conflicting laws and parts of laws to the extent of such conflict; and declaring an emergency."

H. B. No. 552, A bill to be entitled "An Act to amend Acts 1951, 52nd Legislature, Chapter 272, by adding a new section to such Act making the bonds and notes issued by Regional College Districts pursuant to such Act, authorized investments, and making them eligible to secure public funds, and declaring an emergency."

H. B. No. 609, A bill to be entitled "An Act amending Section 12 of Chapter 436, Acts of the 45th Legislature, Regular Session, 1937, as amended, and Section 17 of Chapter 436, Acts of the 45th Legislature, Regular Session, 1937, and repealing Sec-

tion 18 of Chapter 436, Acts of the 45th Legislature, Regular Session, 1937, to provide that certain fees collected by the Commissioner of the Bureau of Labor Statistics be deposited in the General Revenue Fund of the State; abolishing the Boiler Inspection Fund; providing for the transfer of the unexpended balance in that Fund to the General Revenue Fund; providing an effective date; and declaring an emergency."

H. B. No. 610, A bill to be entitled "An Act amending Section 15 of Chapter 270, Acts of the 40th Legislature, Regular Session, 1927, as amended, and repealing Section 16 of Chapter 270, Acts of the 40th Legislature, Regular Session, 1927, to provide that certain fees collected by the Railroad Commission be deposited to the General Revenue Fund of the State; abolishing the Motor Transportation Fund; transferring the balance in that fund to the General Revenue Fund; providing an effective date; and declaring an emergency."

H. B. No. 624, A bill to be entitled "An Act abolishing the Radio and Television Administration Fund; transferring the balance in that fund to the General Revenue Fund; and declaring an emergency."

H. B. No. 638, A bill to be entitled "An Act to amend Section (2) Brokers and Factors, of Article 19.01 of Title 122A, Taxation—General, of the Revised Civil Statutes of Texas, enacted by Chapter 1, Acts 1959, 56th Legislature, 3rd Called Session, by deleting therefrom real estate as an object or subject matter with reference to which said Article 19.01 levies an occupation tax; and declaring an emergency."

H. B. No. 729, A bill to be entitled "An Act amending Section 3. D. of Chapter 382, Acts of the 56th Legislature, Regular Session, 1959, to provide that none of the provisions of the Liquefied Petroleum Gas Code shall apply to any pipeline company; and declaring an emergency."

H. B. No. 739, A bill to be entitled "An Act making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill, or possess any game bird or game animal in Burleson County at any time; to take, kill, or trap any furbearing

animal in said County; prescribing the legislative policies with respect to the wildlife resources of said County; conferring upon the Game and Fish Commission power and authority to regulate by provision, order, rule or regulation the taking of wildlife resources of said County; etc., and declaring an emergency."

H. B. No. 742, A bill to be entitled "An Act to provide that certain independent school districts may, by petition and vote, establish a board of trustees to be composed of seven (7) members; and declaring an emergency."

H. B. No. 748, A bill to be entitled "An Act amending Article 872, of the Penal Code of Texas, 1925, relating to the definition of game birds; and amending Section 1 of Article 881b of the Penal Code of Texas, 1925, relating to the definition of migratory game birds; and declaring an emergency."

H. B. No. 794, A bill to be entitled "An Act creating a conservation district under Article XVI, Section 59, of the Texas Constitution comprising certain territory in Fisher and Scurry Counties, Texas, for the purpose of providing a source of water supply for municipal, domestic and industrial use and treating and transporting the same; etc., and declaring an emergency."

H. B. No. 796, A bill to be entitled "An Act limiting the provisions of this Act to Mitchell County; making it unlawful, except under the provisions of this Act, for any person to hunt, take, kill or possess any game bird or game animal in said County at any time; to take, kill or trap any fur-bearing animal in said County; to take or attempt to take any freshwater fish or other aquatic life in public waters of said County by any means or method; prescribing the legislative policy with respect to the wildlife resources in said County; conferring upon the Game and Fish Commission authority to regulate, etc., and declaring an emergency."

H. B. No. 856, A bill to be entitled "An Act relating to the authority of certain cities or towns to pledge certain revenue to redeem bonds, notes or warrants, as well as the interest thereon of such cities or towns;

providing severability and general repealing clauses; and declaring an emergency."

H. B. No. 881, A bill to be entitled "An Act to alter and reduce the territorial boundaries of Donna Irrigation District Hidalgo County No. 1, a governmental agency and a conservation and reclamation district, by removing and excluding therefrom certain described land; and declaring an emergency."

H. B. No. 916, A bill to be entitled "An Act providing maximum compensation for assessor-collectors of taxes for all counties having a population of not less than six hundred thousand (600,000) nor more than seven hundred thousand (700,000) according to the last preceding Federal Census; and declaring an emergency."

H. B. No. 917, A bill to be entitled "An Act to provide that the judges of the County Courts at Law Nos. 1, 2, and 3, of Bexar County, Texas, shall each receive an annual salary of not less than Twelve Thousand Dollars (\$12,000) nor more than Sixteen Thousand Dollars (\$16,000) to be determined and fixed by the Commissioners Court of Bexar County, Texas, and when thus determined and fixed such annual salary shall be paid in twelve (12) equal monthly installments by warrants drawn upon the County Treasurer of Bexar County, Texas, upon orders by the Commissioners Court; and declaring an emergency."

H. B. No. 938, A bill to be entitled "An Act relating to the regulatory authority of the Game and Fish Commission in Tyler, Jasper and Newton Counties; amending Section 1 of Chapter 19, Acts of the Fifty-fifth Legislature, Second Called Session, 1957, to make the Act applicable to all of Tyler County, including Precinct 4; and declaring an emergency."

H. B. No. 967, A bill to be entitled "An Act authorizing the Commissioners Courts of the Counties of the 31st Judicial District to supplement the salary of the District Attorney of the 31st Judicial District; and declaring an emergency."

H. B. No. 1060, A bill to be entitled "An Act to create the Farmers Creek Watershed Authority as a conservation and reclamation district in Mon-

tague County under the provision of Article XVI, Section 59 of the Constitution of Texas; describing its metes and bounds; etc.; and declaring an emergency."

H. B. No. 1062, A bill to be entitled "An Act to amend Section One (1) of Chapter 511, Acts 1955, 54th Legislature, Regular Session, as heretofore amended by Chapter 65, Acts 1957, 55th Legislature, Regular Session, and by Chapeer 6, Acts 1959, 56th Legislature, Regular Session; finding a benefit; and declaring an emergency."

H. C. R. No. 21, Granting permission to Tom D. Taylor, Dr. William M. Crawford, C. L. Meserole, and Robert C. Green to sue the State of Texas and the Texas Highway Department.

H. C. R. No. 66, Granting permission to Mrs. Carmen Gutierrez to sue the State of Texas and the Texas Highway Department.

H. C. R. No. 78, Extending congratulations to Captain Joe B. Jordan.

H. C. R. No. 85, Granting permission to Ramon G. Bazaldua, Hortencia B. Esquivel and Florentino L. Esquivel to sue the State of Texas and the State Highway Commission.

H. C. R. No. 107, Authorizing the Enrolling Clerk of the House to make certain corrections in H. B. No. 817.

House Bill 334 on Second Reading

Senator Lane asked unanimous consent to suspend the regular order of business and take up H. B. No. 334 for consideration at this time.

There was objection.

Senator Lane then moved to suspend the regular order of business and take up H. B. No. 334 for consideration at this time.

The motion prevailed by the following vote:

Yeas—26

Aikin	Crump
Baker	Dies
Calhoun	Fuller
Colson	Hardeman
Creighton	Hazlewood

Herring
Hudson
Kazen
Krueger
Lane
Moffett
Moore
Owen

Parkhouse
Ratliff
Reagan
Roberts
Schwartz
Secrest
Smith
Weinert

Nays—4

Gonzalez
Patman

Rogers
Willis

Absent—Excused

Martin

The President laid before the Senate on its second reading and passage to third reading:

H. B. No. 334, A bill to be entitled "An Act providing additional revenue for the support of the state government; etc.; and declaring an emergency."

The bill was read the second time.

Senator Lane offered the following Committee Amendment to the bill:

Amend House Bill 334 by striking all below the enacting clause and inserting in lieu thereof the following:

ARTICLE I

Section 1. Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, is amended to read as follows:

"Chapter 20

Retail Sales and Use Tax

"Article 20.01. Title—Definitions. This Chapter is known and may be cited as the Retail Sales and Use Tax Act, and the following words shall have the following meanings unless a different meaning clearly appears from the context.

"(A) Person. "Person" shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, or any other group or combination acting as a unit, but shall not include the United States or any agency thereof, this state or any agency hereof, or any city, county, special district, or other political subdivision of this State.

"(B) Comptroller. "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

"(C) Business. "Business" includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit, or advantage, either direct or indirect.

"(D) Receipts:

"(1) "Receipts" means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money whether received in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property sold. However, in accordance with such rules and regulations as the Comptroller may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.

"(b) The cost of the materials used, labor or service costs, interest paid, losses or any other expense.

"(c) The cost of transportation of the property prior to its sale to the purchaser.

"(2) "Receipts" does not include any of the following:

"(a) Cash Discounts allowed on sales.

"(b) Sales price of property returned by customers when the full sales price is refunded either in cash or credit.

"(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the property sold.

"(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(e) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of tangible personal

property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of a like kind or nature.

"(g) Charges for transportation of goods after sale.

"(3) For purposes of the retail sales tax, if the retailer establishes to the satisfaction of the Comptroller that the retail sales tax has been added to the total amount of the sale price and has not been absorbed by him, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed.

"(E) In this State or Within the State. "In this State" or "Within the State" means within the exterior limits of the State of Texas and includes all territory within these limits owned by or ceded to the United States of America.

"(F) Occasional Sale. "Occasional Sale" shall mean the isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as engaging (or who does not habitually engage) in the business of selling such tangible personal property at retail.

"(G) Purchase. "Purchase" means:

"(1) Any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

"(3) A transfer, for a consideration, of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(H) Rental Price or Lease Price.

"(1) "Rental Price" or "Lease Price" means the total amount for which tangible personal property is rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The Cost of the property rented or leased.

"(b) The cost of material used, labor or service cost, interest charged, losses, or any other expenses.

"(c) The cost of transportation of the property at any time.

"(2) The total amount for which property is rented or leased includes all of the following:

"(a) Any services which are a part of the lease or rental.

"(b) Any amount for which credit is given to the lessee or rentee by the lessor or rentor.

"(I) Retail Sale or Sale at Retail: 'Retail Sale' or 'Sale at Retail' means:

"(1) A sale for any purpose other than for resale in the regular course of business of tangible personal property.

"(2) The delivery in this state of tangible personal property by an owner or former owner thereof or by a factor or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State. The person making the delivery in such cases shall include the retail selling price of the property in his receipts.

"(J) Retailer:

"(1) 'Retailer' includes:

"(a) Every seller engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption.

"(b) Every person making more than two retail sales of tangible personal property during any 12-month period, including sales made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy.

"(c) Every person who leases or rents to another tangible personal property for storage, use or other consumption.

"(2) When the Comptroller determines that it is necessary for the efficient administration of this Chapter to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the Comptroller may so regard them and may regard the dealers, distributors, supervisors or employers as re-

tailers for purposes of this Chapter.

"(K) Sale:

"(1) 'Sale' means and includes any transfer of title or possession, or segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

"(2) 'Sale' includes:

"(a) The producing, fabrication, processing, printing or imprinting of tangible personal property for a consideration for consumers who furnish, either directly or indirectly, the materials used in the producing, fabricating, processing, printing or imprinting.

"(b) The furnishing and distributing of tangible personal property for a consideration by social clubs and fraternal organizations to their members or others.

"(c) The furnishing, preparing or serving for a consideration of food, meals, or drinks.

"(d) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

"(e) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated or printed to the special order of the customer.

"(L) Sales Price:

"(1) 'Sales Price' means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

"(a) The cost of the property sold.

"(b) The cost of material used, labor or service costs, interest paid, losses, or any other expenses.

"(c) The cost of transportation of the property prior to its sale or purchase.

"(2) The total amount for which property is sold includes all of the following:

"(a) Any services which are a part of the sale.

"(b) Any amount for which credit is given to the purchaser by the seller.

"(3) 'Sales Price' does not include any of the following:

"(a) Cash discounts allowed on sales.

"(b) The amount charged for property returned by customers when the

entire amount charged therefor is refunded either in cash or credit.

"(c) The amount charged for labor or services rendered in installing, applying, remodeling or repairing the property sold.

"(d) The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales, whether imposed upon the retailer or the consumer.

"(e) The amount charged for finance charges, carrying charges, services charges or interest from credit extended on sales of tangible personal property under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

"(f) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of tangible personal property of any kind or nature.

"(g) Charges for transportation of goods after sale.

"(M) Seller: 'Seller' includes every person engaged in the business of selling, leasing or renting tangible personal property of a kind, the receipts from the retail sale, lease or rental of which are required to be included in the measure of the retail sales tax.

"(N) Storage: 'Storage' includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

"(O) Storage and Use: Exclusion—'Storage' and 'Use' do not include the keeping, retaining or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated or manufactured into, attached to, or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state.

"(P) Tangible Personal Property: 'Tangible personal property' means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

"(Q) Taxpayer: 'Taxpayer' means any person liable for tax under this Chapter.

"(R) Use: 'Use' includes the exer-

cise of any right or power over tangible personal property incident to the ownership of that property except that it does not include the sale of that property in the regular course of business.

"(S) Sale for Resale: 'Sale for Resale' shall mean a sale of tangible personal property to any purchaser who is purchasing said property for the purpose of reselling it in the normal course of his business. A sale for resale shall include a sale of tangible personal property to a purchaser for the sole purpose of that purchaser's renting or leasing said tangible personal property to another person, but not if incidental to the renting or leasing of real estate.

"(T) Contractor or Repairman: 'Contractor' or 'Repairman' shall mean any person who performs any repair services upon tangible personal property or who performs any improvement upon real estate, and who, as a necessary and incidental part of performing such services incorporates tangible personal property belonging to him into the property being so repaired or improved. Contractor or repairman shall be considered to be the consumer of such property furnished by him and incorporated into the property of his customer, for all of the purposes of this Chapter.

"(1) The above provision shall apply only if the contract between the person performing the services and the person receiving them contains a lump sum price covering both the performance of the services and the furnishing of the necessary incidental material.

"(2) If the contract between the person providing the services and the person receiving them contains separate amounts applicable to the performance of the services and the furnishing of the material then the above section shall not apply, and the person furnishing the materials shall be liable for the retail sales tax upon the agreed price of the materials as thus set forth in the contract. Provided, however, that the agreed price of the materials shall not be less than the actual cost of such materials to the person so providing them.

"(3) In any case where the person so providing such materials has paid the retail sales tax to his supplier when purchasing the property, he shall be entitled to credit the tax so paid to his supplier against any tax imposed by this Chapter with respect

to his subsequent sale of that property.

"(U) Manufacturing: 'Manufacturing' shall mean and include every operation commencing with the first production stage of any article of tangible personal property and ending with the completion of tangible personal property having the physical properties (including packaging, if any) which it has when transferred by the manufacturer to another.

"Art. 20.02. Imposition of Retail Sales Tax: There is hereby imposed upon each separate sale at retail of tangible personal property made within this State a retail sales tax at the rate of 2% of the sale price of each item or article of tangible personal property when sold at retail in this State.

"(A) Method of Collection and Rate of Retail Sales Tax: The tax hereby imposed shall be collected by the retailer from the consumer.

"(1) The Tax shall be as follows and shall be collected by using the following bracket system formula on each retail sale:

Amount	Tax
\$.01 to \$.24	NO TAX
.25 to .74	\$.01
.75 to 1.24	.02
1.25 to 1.74	.03
1.75 to 2.24	.04

Provided, further that for each additional 50¢ of purchase, or fraction thereof, 1¢ retail sales tax shall be collected thereon.

"(2) The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such taxes is prohibited.

"(B) Assumption or Absorption of Tax by Retailer: Unlawful Advertising:

"(1) It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, either directly or indirectly, that the tax or any part thereof will be assumed or absorbed by him or that it will not be added to the selling price of the property sold or that, if added, it or any part of it will be refunded.

"(2) Any person violating any provision of this section is guilty of a misdemeanor.

"(C) Retail Sales Tax Permit Application:

"(1) Every person desiring to engage in or to conduct business as a

seller within this State shall file with the Comptroller an application for a permit for each place of business.

"(2) Every application for a permit shall:

"(a) Be made upon a form prescribed by the Comptroller.

"(b) Set forth the name under which the applicant transacts or intends to transact business and the location of his place or places of business.

"(c) Set forth such other information as the Comptroller may require.

"(d) The application shall be signed by the owner if he is a natural person; in the case of an association or partnership, by a member or partner; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application.

"(D) Retail Sales Permit Issuances: After compliance with this Article, paragraph (C), by the applicant, the Comptroller shall grant and issue to each applicant without charge a separate permit for each place of business within the State. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the place for which issued.

"(E) Revocation, Suspension of Permit: Procedure:

"(1) Whenever any person fails to comply with any provision of this Chapter relating to the retail sales tax or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person 20 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

"(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

"(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

"(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this

Chapter relating to the retail sales tax and the regulations of the Comptroller.

"(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

"(F) Presumption of Taxability: Resale Certificates: For the purpose of the proper administration of this Chapter and to prevent evasion of the retail sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for the purpose of reselling, leasing or renting it.

Effect of Resale Certificate: The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling, leasing or renting tangible personal property. A resale certificate may be given by a purchaser, who at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be resold, leased or rented or will be used for some other purposes.

"(H) Forms and Contents of Resale Certificate:

"(1) The certificate shall:

"(a) Be signed by and bear the name and address of the purchaser.

"(b) Indicate the number of the permit, if any, issued to the purchaser.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate: If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Resale Certificate; Commingled Fungible Goods: If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but of such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of goods covered by the resale certificate until a quantity of such goods so commingled has been sold.

"(K) Bad Debts: Credit shall be allowed to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

"(L) Refunds and Allowances Credit shall be allowed to the retailer for taxes paid on the amount of any refunds or credits allowed to a purchaser as a result of a bona fide renegotiation of a sales price. Such renegotiation shall include agreements by which the seller refunds or allows credit for any amount in satisfaction for an alleged breach of warranty with respect to tangible personal property previously sold him to the person with whom said agreement is made.

"Art. 20.03. Imposition and Rate of Use Tax: An excise tax is hereby imposed on the storage, use or other consumption in this state of tangible personal property purchased, leased or rented from any retailer on or after September 1, 1961, for storage, use or other consumption in this State at the rate of 2% of the sales price of the property or, in the case of leases or rentals, of said lease or rental prices.

"(A) Liability for Use Tax: Extinction of Liability: Every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer or leased or rented from another person for such purpose is liable for the tax. His liability is not extinguished until the tax has been paid to this State, except that a receipt from a retailer maintaining a place of business in this State or from a retailer who is authorized by the Comptroller, under such rules and regulations as he may prescribe, to collect the tax and who

is, for the purposes of this Chapter relating to the use tax, regarded as a retailer maintaining a place of business in this State, given to the purchaser pursuant to paragraph (B) of this Article is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

"(B) Collection by Retailer: Purchaser's Receipt: Every retailer maintaining a place of business in this State and selling, leasing or renting tangible personal property for storage, use or other consumption in this State, shall, at the time of making the sales, collect any use tax which may be due from the purchaser and shall give the purchaser a receipt therefor in the manner and form prescribed by the Comptroller.

"(C) Assumption, Absorption of Tax by Retailers, Unlawful Advertising: It is unlawful for any retailer to advertise or to hold out or to state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling, renting, or leasing price of the property sold, rented or leased, or that, if added, it or any part thereof will be refunded.

"(D) Unlawful Acts: Any person convicted of violating paragraphs (B) or (C) of this section shall be guilty of a misdemeanor and shall suffer the penalties set forth in Art. 20.12 (E) of this Chapter.

"(E) Registration of Retailers: Every retailer selling, leasing or renting property for storage, use or other consumption in this State shall register with the Comptroller and give:

"(1) The name and address of all agents operating in this State.

"(2) The location of all distribution or sales houses or offices or other places of business in this State.

"(3) Such other information as the Comptroller may require.

"(F) Presumption of Purchase for Use: Resale Certificate: For the purpose of the proper administration of this Chapter and to prevent evasion of the use tax and of the duty to collect the use tax, it shall be presumed that tangible personal property sold, leased or rented by any person for delivery in this State is sold, leased or rented for storage, use or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who sells, leases or rents the

property unless he takes from the purchaser a certificate to the effect that the property is purchased for resale, leasing or renting.

"(G) Effect of Resale Certificate: The resale certificate relieves the seller from the burden of proof only if taken in good faith from a person who is engaged in the business of selling tangible personal property. A resale certificate may be given by a purchaser who, at the time of purchasing the tangible personal property, intends to sell, lease or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be so sold, leased or rented or will be used for some other purpose.

"(H) Form and Contents of Resale Certificate:

"(1) The certificate shall:

"(a) Be signed and bear the name and address of the purchaser.

"(b) Indicate the number of the permit, if any, issued to the purchaser.

"(c) Indicate the general character of the tangible personal property sold, leased or rented by the purchaser in the regular course of business.

"(2) The certificate shall be substantially in such form as the Comptroller may prescribe.

"(I) Liability of Purchaser Giving Resale Certificate; Use of Article Bought for Resale: If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale, lease or rental, in the regular course of business, the use shall be taxable to the purchaser as of the time when the property is first so used, and the sales price of the property to him shall be deemed the measure of the tax.

"(J) Improper Use of Resale Certificates: Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purchase of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and shall upon conviction suffer the penalties set forth in Art. 20.12 (B) of this Chapter.

"(K) Resale Certificate: Commingled Fungible Goods: If a purchaser gives a resale certificate with respect to the purchaser of fungible goods and thereafter commingles these goods with other fungible goods not

so purchased but of such a similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods covered by the resale certificate until a quantity of commingled goods equal to the quantity of such goods so commingled has been sold.

"(L) Presumption of Purchase from Retailer: It shall be further presumed in the absence of evidence to the contrary, that tangible personal property shipped or brought to this State by the purchaser after the effective date of this act was purchased from a retailer on or after the effective date of this act for storage, use, or other consumption in this State.

"Art. 20.04. Exemptions: "Exempted from taxes imposed by this Chapter," as used herein, means exempted from the computation of the amount of the taxes imposed.

Exemption Certificates: If a Purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the receipts from the sale as exempted by this Chapter from the computation of the amount of the retail sales tax, and if the purchaser then uses the property in some other manner or for some other purpose, the purchaser shall be liable for payment of the retail sales tax as if he were a retailer making a retail sale of the property at the time of such use, and the cost of the property to him shall be deemed the receipts from such retail sale for the purpose of determining the amount of tax for which he is liable.

"(A) Constitution and Statutory Exemptions: There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of tangible personal property the gross receipts from the sale, lease or rental of which, or the storage, use or other consumption of which, this State is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this State.

"(B) Items Wholly or Partly Taxed Under Existing Statutes: There are exempted from the taxes imposed by this Chapter the receipts from the sale, production, distribution or the storage, use or other consumption in

this State of any products, materials, services or other items subject to a receipts, sales, production, excise or use tax or subject to any occupation tax imposed by this State measured in whole or in part by receipts or sales prices or quantity or weight of products. This exemption shall include the receipts from the sale, production, distribution, storage, use or other consumption in this State of products, materials, services and all other items subject to any receipts, sales, production, occupation, excise or use tax levied by this State.

There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, distribution or other consumption of natural resources which are taxable by this State at the point of severance; provided, however, that this exemption shall apply only to the sale, use, storage, distribution or other consumption coincident with the taxable transaction. Nothing herein shall be construed or interpreted as a limitation on the exemption of sales for resale as provided in this Chapter.

This exemption shall also include, but not be limited to, the sale, distribution, storage, use or other consumption of water, telephone, and telegraph instruments and services, motor vehicles, cigarettes, tobacco products, motor fuels, special fuels, gas and electricity. Provided, however, the exemption of gas and electrical services shall be limited to gas and electricity used in manufacturing operations or electrical processes such as electroplating and electrolysis.

This exemption shall also include all alcoholic beverages, including distilled spirits, beer, ale and wine, subject to a tax imposed by the Texas Liquor Control Act, as amended; except that any such alcoholic beverages shall be taxable when, and only when, consumed with food as a part of a meal served on or off the premises of the vendor for consumption at tables, chairs or counters or from trays, glasses, dishes or other tableware provided by the vendor.

"(C) Component Parts; Packaging and Containers:

"(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use or consumption in this State of, tangible personal property which will become an ingredient or component part of, or be in-

incorporated into or used or consumed in a manufactured or processed product of tangible personal property produced for ultimate sale at retail within or without this State; and tangible personal property, such as chemical materials used as catalytic agents, used or consumed in any manner in manufacturing or processing of a product of tangible personal property for ultimate sale at retail within or without this State.

"(2) Wrapping, Packing and Packaging Supplies:

"(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing or packaging any tangible personal property for the purpose of expediting or furthering in any way the sale of that property.

"(b) For the purpose of this section, wrapping, packing and packaging supplies shall include, but shall not be limited to:

"(1) Wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, labels, staples, glue and mailing tubes;

"(2) Property used inside a package in order to shape, form, preserve, stabilize or protect the contents, such as, but not limited to, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay and laths.

"(3) Containers:

"(a) There are exempted from the taxes imposed by this Chapter the receipts of sales, leases, or rentals of, and the storage, use or other consumption, in this State, of:

"(1) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

"(2) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this Chapter.

"(3) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

"(a) As used in this Article, the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents

for re-use. All other containers are "nonreturnable containers."

"(D) Meals and Food Products; Sales to Students, Teachers: There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of, meals and food products for human consumption served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, to the students or teachers of an elementary or secondary school during the regular school day.

"(E) Interstate Shipments:

"(1) Property Shipped Outside State Pursuant to Sales Contract; Delivery by Retailer: There are exempted from the taxes imposed by this Chapter receipts from any sale of tangible personal property which is shipped to a point outside this State pursuant to the contract of sale by delivery by the retailer to such point by means of:

"(a) Facilities operated by the retailer.

"(b) Delivery by the retailer to a carrier for shipment to a consignee at such point; or

"(c) Delivery by the retailer to a customs broker or forwarding agent for shipment outside this State.

"(2) Common Carriers. There are exempted from the computation of the retail sales tax, the receipts from sales of tangible personal property to a common carrier, shipped by the seller via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier outside the State of Texas.

"(3) Special Use Tax Exemption. The use tax imposed herein shall not apply to:

"(1) The use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as rolling stock in interstate commerce.

"(2) The temporary storage in this State of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored

here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property which is used solely outside this State.

"(3) The storage, use or consumption of tangible personal property which is acquired outside this State, the sale, lease or rental or the storage, use or consumption of which property would be exempt from the retail sales or use tax were it purchased within this State.

"(F) United States; State; Political Subdivision; Religious, Eleemosynary Organizations: There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by:

"(1) The United States, its unincorporated agencies and instrumentalities.

"(2) Any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States.

"(3) The State of Texas, its unincorporated agencies and instrumentalities.

"(4) Any county, city, special district or other political subdivision of this State.

"(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

"(G) Occasional Sales. There are exempted from the taxes imposed by this Chapter the receipts from the occasional sales of tangible personal property and the storage, use or other consumption in this State of tangible personal property the transfer of which to the consumer constitutes an occasional sale or the transfer of which the consumer is made by way of an occasional sale.

"(H) Written Contracts Executed Prior to the Effective Date of this Act. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use or rental of, and the storage, use or other consumption in this State of, tangible personal property used for the performance of a written contract en-

tered into prior to the effective date of this Act.

"(I) Use Tax: Reciprocal Credit for Similar Taxes Paid Elsewhere. There shall be allowed as a credit to any taxpayer against the use tax imposed by this Chapter upon any tangible personal property, the amount of any like tax paid by that taxpayer in another State, territory or possession of the United States of America with respect to the sale, purchase or use of such property; provided, that such other States, territories, or possessions provide for a similar tax credit for taxpayers of this State.

"(J) Use Tax Inapplicable When Retail Sales Tax Applies or When Use Tax Previously Paid. The storage, use or other consumption in this State of property, the receipts from the sale, lease or rental of which are required to be included in the measure of the retail sales tax, or property upon which a use tax has been paid by the taxpayer using said property, is exempted from the use tax imposed by this Chapter.

"(K) Food and Food Products for Human Consumption. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of, food products for human consumption.

"(1) "Food Products" shall include, except as otherwise provided herein, but shall not be limited to, cereals and cereal products; milk and milk products, including ice cream, oleomargarine; meat and meat products; poultry and poultry products; fish and fish products; eggs and egg products; vegetable and vegetable products; fruit and fruit products; spices, condiments and salt; sugar and sugar products; coffee and coffee substitutes; tea, cocoa and cocoa products; or any combination of the above.

"(2) "Food products" shall not include:

"(a) Medicines, tonics, vitamins and medicinal preparations in any form;

"(b) Water, including mineral bottled water, carbonated water, and ice;

"(c) Meals served on or off the premises of the vendor or drinks or food furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware provided by the vendor. Provided, however, meals, food and drink served to patients and inmates of hospitals and other institu-

tions licensed by the State for the care of human beings shall be deemed "food products."

"(L) Prescription Medicines. The receipts from the sale of medicines, drugs, and other curative preparations when prepared by a registered pharmacist under a prescription written and signed by a licensed physician shall be exempt from the taxes imposed by this Act.

"(M) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

"(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

"(2) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

"(4) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

"(5) Farm machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

"(N) Newspapers and Periodicals. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of, tangible personal property which becomes an ingredient or component part of any newspaper or periodical regularly issued at average intervals not exceeding 3 months and any such newspaper or periodical.

"(O) Radio and Television: There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of and the storage, use or other consumption in this State of, tangible personal property which becomes an ingredient or component part of any radio or television production. This exemption shall include, but not be limited to, film, magnetic tape, and chemicals or other

supplies used in the processing of films and magnetic tape used in the reproduction of sound and pictures for radio and television purposes.

"(P) Sale for Resale; Leasing or Renting:

"(1) There are exempted from the taxes imposed by this Chapter the receipts from all sales for resale, leasing or renting.

"(2) However, if a person purchase tangible personal property for the purpose of leasing or renting it to another person and if he later sells it by means of an occasional sale before he has collected and paid to this State as much tax on the rental or lease charges as would have been due and payable to this State had he not purchased the property for the purpose of so renting and leasing it, he shall, at the time of his occasional sale of said property include in his receipts from taxable sales the amount by which his purchase price exceeded the amount of rents collected by him on said property.

"(3) Where a lessor makes a retail sale of leased tangible personal property to a lessee of that property under an agreement whereby certain rental payments are credited against the purchase price of that property, he need not collect or pay any tax on the sale price to the extent that he has collected and paid on such rental payments.

"(Q) Certain Vessels: There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of vessels of more than fifty (50) tons burden.

"(R) Certain Aircraft: There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certificated or licensed carriers of persons or property, or sold to any foreign government or sold to persons who are not residents of this State.

"Art. 20.05. Return and Payments:

"(A) Due Date of Taxes: The taxes imposed by this Chapter are due and payable to the Comptroller quarterly on or before the last day of the month next succeeding each quarterly period.

"(B) Method Retailer is to Use in Computing Tax: The retail sales tax levied under Art. 20.02 hereof, shall

be computed and paid to the Comptroller on the basis of 2% of all receipts from the total sales of such tangible personal property sold by such retailer under said Article.

"(C) Return: Time for Filing: Persons Required to File: Signatures: Accounting Basis:

"(1) On or before the last day of the month following each quarterly period of 3 months, a return for said quarterly period shall be filed with the Comptroller in such form as the Comptroller may prescribe.

"(2) For purposes of the retail sales tax a return shall be filed by every person subject to the tax. For purposes of the use tax a return shall be filed by every retailer maintaining a place of business in the State and by every person who has purchased tangible personal property, the storage, use or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

"(3) Returns shall be signed by the person required to file the return or by his duly authorized agent but need not be verified by oath.

"(4) A taxpayer who keeps his regular books and records on a cash basis or on an accrual basis or on any generally recognized accounting basis which correctly reflects the operation of the business, may file the tax returns required by this chapter on the same accounting basis that is used for the regular books and records.

"(D) Contents of Return:

"(1) For the purposes of the retail sales tax, the return shall show the sale or receipts of the retailer or seller during the preceding reporting period. For purposes of the use tax, in case of a return filed by a retailer, the return shall show the total receipts from sales of property sold, by him during the preceding reporting period which was purchased for the purpose of storage, use or consumption in this State.

"(2) Gross proceeds from taxable rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect thereto in accordance with such rules and regulations as the Comptroller may prescribe.

"(3) In case of a return filed by the purchaser, the return shall show the total sales price of the property purchased by him, the storage use or consumption of which became subject

to the use tax during the preceding reporting period.

"(4) The return shall also show the amount of the taxes for the period covered by the return and such other information as the Comptroller deems necessary for the proper administration of this Chapter.

"(E) Reimbursement to Taxpayer for Collection of Tax: The taxpayer shall deduct and withhold, from the taxes otherwise due from him on his quarterly tax return, two (2) per cent thereof to reimburse himself for the cost of collecting the tax provided, however, in the event the payment of any taxes due under the applicable provisions of this Chapter are not paid within the time required, taxpayer forfeits his claim to the two per cent discount.

"(F) Return Periods; Quarterly Periods Other than Calendar Quarters: The Comptroller, if he deems it necessary in order to insure payment to or facilitate the collection by the State of the amount of taxes due, may require returns and payment of the amount of said taxes for quarterly periods other than calendar quarters, in the case of a particular seller, retailer or purchaser, as the case may be, or for other than quarterly periods.

"(G) Delivery of Return: Remittance: The Person required to file the return shall deliver the quarterly return together with a remittance of the net amount of the tax due to the office of the Comptroller.

"(H) Use of Tokens or Stamps: In no event shall any tokens, stamps or the like be used in connection with the collection of payment of the taxes imposed herein.

"(I) Extensions for Filing Return, Payment of Tax: Interest:

"(1) The Comptroller for good cause may extend for any period not to exceed 1 month the time for making any return or paying any amount required to be paid under this Chapter.

"(2) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate of 6 per cent per annum from the date on which the tax would have been due without the extension until the date of payment.

"Art. 20.06. Deficiency Determination:

"(A) Recomputation of Tax; De-

termination on Discontinuance of Business:

"(1) If the Comptroller is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the State by any person, he may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession or which may come into his possession.

"(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (F) of this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

"(B) Interest on Deficiency: The amount of the determination, of any deficiency exclusive of penalties shall bear interest at the rate of one-half of one per cent per month, or fraction thereof, from the last day of the month following the quarterly period for which the amount should have been returned until the date of payment.

"(C) Offsetting of Overpayments; Computation of Interest:

"(1) In making a determination, the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

"(2) The interest on underpayments and overpayments shall be computed in the manner set forth in paragraphs (G) Art. 20.08 and (G) Art. 20.10 of this Act.

"(D) Penalty for Fraud, Intent to Evade: If any part of deficiency for which a deficiency determination is made is due to fraud or an intent to evade this Chapter or authorized rules and regulations, a penalty of 25 per cent of the amount of the determination shall be added thereto.

"(E) Notice of Comptroller's Determination; Service:

"(1) The Comptroller shall give to the retailer or person storing, using or consuming tangible personal property written notice of his determination.

"(2) The notice may be served personally or by mail; if by mail, the notice shall be addressed to the re-

tailer or person storing, using or consuming tangible personal property at his address as it appears in the records of the Comptroller.

"(3) In case of service by mail of any notice required by this Chapter, the service is complete at the time of deposit in the United States post office.

"(F) Time Within Which Notice of Deficiency Determination to be Mailed; Consent to Later Mailing of Notice:

"(1) Every notice of a deficiency determination shall be personally served or mailed within 3 years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined or within 3 years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally served within 5 years after the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

"(2) The limitation specified in this Article does not apply in case of a retail sales tax proposed to be determined with respect to sales of property for the storage, use or other consumption of which notice of a deficiency determination has been or is given pursuant to paragraphs (E), (F) (1), and (J) of this Article, and paragraph (B) of Art. 20.07. The limitation specified in this Article, does not apply in case of an amount of use tax proposed to be determined with respect to storage, use or other consumption of property for the sale of which notice of a deficiency determination has been or is given pursuant to paragraphs (E), (F) (1), and (J) of this Article, and paragraph (B) of Art. 20.07 and to subsection 1 of this Article.

"(3) If, before the expiration of the time prescribed in this Article for the mailing of a notice of deficiency determination, the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

"(G) Determination if No Return

Made; Estimate and Computation; Discontinuance of Business:

"(1) If any person fails to make a return, the Comptroller shall make an estimate of the amount of the receipts of the person, or, as the case may be, of the amount of the total sales, rent or lease price of tangible personal property sold, rented or leased or purchased, by the person, the storage, use or other consumption of which in this State is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Comptroller's possession or may come into his possession. Upon the basis of this estimate, the Comptroller shall compute and determine the amount required to be paid to the State, adding to the sum thus arrived at a penalty equal to 10 per cent thereof. One or more determinations may be made for one or for more than one period.

"(2) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in paragraph (F) of this Article as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this Chapter.

"(H) Offsets; Computation; Interest:

"(1) In making a determination, the Comptroller may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for another period or periods, against penalties, and against the interest on the underpayments.

"(2) The interest on underpayments and overpayments shall be computed in the manner set forth in paragraphs (G) of Art. 20.08 and (G) of Art. 20.10.

"(I) Interest on Amount of Determination: The amount of the determination exclusive of penalties, shall bear interest at the rate of one-half of 1 per cent per month, or fraction thereof, from the last day of the months following the quarterly period for which the amount, or any portion thereof, should have been returned until the date of payments.

"(J) Notice of Estimate, Determination and Penalty; Service: Promptly after making his determination the Comptroller shall give to the person written notice of the estimate, deter-

mination and penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Art. 20.07. Jeopardy Determinations:

"(A) Jeopardy Determination; When Made; Date Due: If the Comptroller believes that the collection of any tax or any amount of tax required to be collected and paid to the State or the amount of any determination will be jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting that fact upon the determination. The amount determined is due and payable immediately.

"(B) Nonpayments; Finality of Determination: If the amount specified in the determination is not paid within 20 days after service of notice thereof upon the person against whom the determination is made, the amount becomes final at the expiration of the 20 days unless a petition for redetermination is filed within the 20 days, a delinquency penalty of 10 per cent of the tax or amount of the tax and the interest provided in paragraph (G) Art. 20.08 shall attach to the amount of the tax or the amount of the tax required to be collected.

"(C) Petition for Redetermination; Deposit of Security: The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to paragraphs (A) through (G) of Art. 20.08. He shall, however, file the petition for redetermination with the Comptroller within 20 days after the service upon him of notice of determination. The person shall also within the 20-day period deposit with the Comptroller such security as he may deem necessary to insure compliance with this Chapter. The security may be sold by the Comptroller in the manner prescribed by paragraph (A) Art. 20.09.

Art. 20.08. Petition for Redetermination:

"(A) Time to File:

"(1) Any person against whom a determination is made under paragraphs (A) through (J) of Art. 20.06 or any person directly interested, may petition for a redetermination within 30 days after service upon the person of notice thereof.

"(2) If a petition for redetermination is not filed within the 30-day

period, the determination becomes final at the expiration of the period.

"(B) Oral Hearing; Notice, Continuances:

"(1) If a petition for redetermination is filed within the 30-day period, the Comptroller shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him 20 days notice of the time and place of the hearing.

"(2) The Comptroller may continue the hearing from time to time as may be necessary.

"(C) Increase, Decrease of Amount of Determination: The Comptroller may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing; upon which the petitioner shall be entitled to a 30-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

"(D) Order of Comptroller on Petition for Redetermination; Finality of Order: The order or decision of the Comptroller upon a petition for redetermination becomes final 30 days after service upon the petitioner of notice thereof.

"(E) Due Date of Determinations; Penalties: All determinations made by the Comptroller under paragraphs (A) through (J) of Art. 20.06 are due and payable 20 days after the time they become final. If they are not paid when due and payable, a penalty of 10 per cent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

"(F) Service of Notice: Any notice required by paragraphs (A) through (E) of this Article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

"(G) Interest for Failure to Pay Tax; Amount; Rates: Any person who fails to pay any tax to the State or any amount of tax required to be collected and paid to the State, within the time required shall pay, in addition to the tax or amount of tax, interest at the rate of one-half of 1 per cent per month, or fraction thereof, from the date on which the tax or the amount of tax required to be collected became due and payable to the State until the date of payment.

Art. 20.09. Collection of Tax:

"(A) Notice of Delinquency to Persons Holding Credits or Property of Delinquent; Transfer or Disposition of Property or Debt after Notice; Bank Deposits:

"(1) If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the Comptroller may, not later than 3 years after the payment became delinquent or within 3 years after the last recording of a certificate under paragraph (H) of this Article, give notice thereof personally or by registered mail to all persons, including any officer or department of the State or any political subdivision or agency of the State, having in their possession or under their control any credits or other personal property belonging to the delinquent, or owing any debts to the delinquent, or owing any debts to the delinquent or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Comptroller.

"(2) After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they received the notice until the Comptroller consents to a transfer or disposition, or until 60 days elapse, after receipt of the notice, whichever period expires earlier.

"(3) All persons so notified shall, within 20 days after receipt of the notice, advise the Comptroller of all such credits, other personal property, or debts in their possession, under their control, or owing by them.

"(4) If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, in order to be effective, shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held.

"(5) If, during the effective period of the notice to withhold, any person so notified makes any transfer or dis-

position of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this Chapter from the person with respect to whose obligation the notice was given.

"(B) Action for Collection of Tax, Penalties, Interest; Limitation: At any time within 3 years after any tax or any amount of tax required to be collected becomes due and payable, and at any time within 3 years after the delinquency of any tax or any amount of tax required to be collected, or within 3 years after the last recording of a certificate under paragraph (H) of this Article, the Comptroller may bring an action in the courts of this State, or any other State, or of the United States, in the name of the people of the State of Texas, to collect the amount delinquent together with penalties and interest.

"(C) Attorney General to Prosecute Action: The attorney general shall prosecute the action, and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall be applicable to the proceedings.

"(D) Issuance of Writ of Attachment Without Bond, Affidavit: In the action a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment is required.

"(E) Evidentiary Effect of Delinquency Certificate: In the action a certificate by the Comptroller showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amounts set forth, and of the compliance by the Comptroller with all the provisions of this Chapter in relation to the computation and determination of the amounts.

"(F) Action for Use Tax; Manner of Service of Process: In any action relating to the use tax brought under this Chapter, process may be served according to the Rules of Civil Procedure or may be served upon any agent or clerk in this State employed by any retailer in a place of business maintained by the retailer in this State. In the latter case, a copy of the process shall forthwith be sent by registered mail to the retailer at his principal or home office.

"(G) Priority of Tax Claim, or Lien: Subordination to Prior Recorded Lien, Other Debts:

"(1) The amounts required to be paid by any person under this Chapter together with interest and penalties shall be satisfied first in any of the following cases:

"(a) Whenever the person is insolvent.

"(b) Whenever the person makes a voluntary assignment of his assets.

"(c) Whenever the estate of the person in the hands of executors, administrators or heirs is insufficient to pay all the debts due from the deceased.

"(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this Chapter are levied upon by process of law.

"(2) This Article does not give the State a preference over any recorded lien which attached prior to the date when the amounts required to be paid became a lien; or preference over costs of administration, funeral expenses, expenses of last illness, family allowances, debts preferred by the laws of the United States or wages as provided in the laws of this State.

"(H) Recordation of Certificate of Delinquency; Resulting Lien; Duration and Extension:

"(1) If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may, within 3 years after the amount is due, file for record in the office of any county clerk a certificate specifying the amount, interest and penalty due, the name and address as it appears on the records of the Comptroller of the person liable for the same, and the fact that the Comptroller has complied with all provisions of this Chapter in the determination of the amount required to be paid.

"(2) From the time of the filing for record, the amount required to be paid, together with interest and penalty, constitutes a lien upon all real property in the county owned by the person or afterwards and before the lien expires acquired by him. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the time of the filing of the certificate unless sooner released or otherwise discharged.

"(3) The lien may, within 10 years from the date of the filing of the certificate or within 10 years from the

date of the last extension of the lien in the manner herein provided, be extended by filing for record a new certificate in the office of the county clerk of any county, and from the time of such filing, the lien shall be extended to the real property in such county for 10 years, unless sooner released or otherwise discharged.

"(1) Comptroller May Release, Subordinate Lien: The Comptroller shall at the request of the person involved at any time release all or any portion of the property subject to any lien provided for in this Chapter from the lien or subordinate the lien to other liens and encumbrances if he determines that the amount, interest and penalties have been paid or are secured sufficiently by a lien on other property or that the release or subordination of the lien will not jeopardize the collection of the amount, interest and penalties.

"(J) Evidentiary Effect of Certificate of Release, Subordination: A certificate by the Comptroller to the effect that any property has been released from the lien, or that the lien has been subordinated to other liens and encumbrances, shall be conclusive evidence that the property has been released, or that the lien has been subordinated as provided in the certificate.

"(K) Judgment for Taxes:

"(1) Comptroller May Sue. If any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may within three (3) years after the amount is due file in a court of competent jurisdiction in Travis County, Texas, or any county where the person owing the tax may be a resident or have a place of business, an action for recovery of such tax, together with any penalties and interest. Such action shall be in the form of an action for debt, and the certificate of the Comptroller or his duly authorized agent that the tax is due, specifying the amount due together with penalty and interest, shall be prima facie evidence of the justness and correctness of such claim by the State. Service may be had according to the provisions of Art. 20.09, Paragraph (F) of this Chapter.

"(2) Judgments May be Abstracted: Any judgment obtained in favor of the State by an action brought under this Article may be filed for record with the county clerk of any county in this State and when so filed shall con-

stitute a lien upon all of the real property in the county owned by the person named as defendant in the judgment or thereafter acquired by him. Such lien to have the force and effect of a judgment lien for ten (10) years from the date of judgment unless sooner released or discharged.

"(3) Release: Upon payment in full of the amount of any judgment obtained under this Article, the Comptroller may issue a release of any such judgment lien. Prior judgments for taxes and penalties shall not bar subsequent suit by the Comptroller for additional taxes, or penalties or interest accruing after any such prior judgment, provided such suits are instituted within three years after such taxes are due.

"(4) Execution: Execution may issue upon any judgment obtained under this Article in the same manner as execution may issue in other judgments for debt, and sale shall be held under such execution as prescribed in the Rules of Civil Procedure and Statutes of this State.

"(L) Seizure and Sale:

"(1) Seizure and sale. At any time within three (3) years after any person is delinquent in the payment of any amount, the Comptroller may forthwith collect the amount in the following manner: The Comptroller shall seize any property, real or personal, of the person and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest or penalties on account of the seizure and sale. Any seizure made to collect a sales tax due shall be only of property of the vendor not exempt from execution under the laws of this State.

"(2) Notice of Sale. Notice of the sale and the time and place thereof shall be given to the delinquent person in writing at least 20 days before the date set for the sale in the following manner: The notice shall be enclosed in an envelope addressed to the person, in case of a sale for retail sales taxes due, at his last known address or place of business, and in case of a sale for use taxes due, at his last known residence or place of business in this State. It shall be deposited in the United States mail, postage prepaid. The notice shall also be published for at least ten (10) days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there

is no newspaper of general circulation in the county, notice shall be posted in three (3) public places in the county twenty (20) days prior to the date set for the sale. The notice shall contain a description of the property to be sold, a statement of the amount due, including interest, penalties, and costs, the name of the delinquent, and the further statement that unless the amount due, interest, penalties, and costs are paid on or before the time fixed in the notice for the sale, the property, or so much of it as may be necessary, will be sold in accordance with the law and the notice.

"(3) Bill of Sale; Deed. At the sale, the Comptroller shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the person liable for the amount.

"(4) Disposition of proceeds. If upon the sale the moneys received exceed the total of all amounts, including interest, penalties, and costs due the State, the Comptroller shall return the excess to the person liable for the amounts and obtain his receipt. If any person having an interest in or lien upon the property files with the Comptroller prior to the sale notice of his interest or lien, the Comptroller shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Comptroller shall deposit the excess moneys with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount, his heirs, successors, or assigns.

"(M) Payment on Termination of Business and Successor's Liability:

"(1) Withholding by purchaser. If any vendor liable for any amount under this Chapter sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owner produces a receipt from the Comptroller showing that it has been

paid or a certificate stating that no amount is due.

"(2) Liability of purchaser; release. If the purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money. Within 60 days after receiving a written request from the purchaser for a certificate, or within 60 days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than 90 days after receiving the request, the Comptroller shall either issue the certificate or mail notice to the purchaser at his address as it appears on the records of the Comptroller of the amount that must be paid as a condition of issuing the certificate. Failure of the Comptroller to mail the notice will release the purchaser from any further obligation to withhold purchase price as above provided. The time within which the obligation of the successor may be enforced shall start to run at the time the vendor sells out his business or stock of goods or at the time that the determination against the vendor becomes final whichever event occurs the later.

Art. 20.10. Overpayments and Refunds:

"(A) Certification of Excess Amount Collected: Credit and Refund: If the Comptroller determines that any amount, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed, the Comptroller shall set forth that fact in his records and the excess amount collected or paid may be credit on any amount then due and payable from the person under this Chapter. Any balance may be refunded to the person by whom it was paid, or his successors, administrators or executors.

"(B) Claims for Refund, Credit: Limitation:

"(1) No refund shall be allowed unless a claim therefor is filed with the Comptroller by the person who overpaid the tax or his attorney, assignee, executor, or administrator, within 3 years from the last day of the month following the close of the quarterly period for which the overpayment was made, or within six months after any determination be-

comes final under paragraphs (A) through (J) of Article 20.06 or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires the later.

"(2) No credit shall be allowed after the expiration of the period specified for filing claims for refund unless a claim for credit is filed with the Comptroller within such period, or unless the credit relates to a period for which a waiver is given pursuant to paragraph (F) under Article 20.06.

"(C) Credit or Refund for Use Tax: Reimbursement of Retailer for Retail Sales Tax: No credit or refund of any amount paid pursuant to paragraphs (A) through (L) of Article 20.03 shall be allowed on the ground that the storage, use or other consumption of the property is exempted under Article 20.04 unless the person who paid the amount reimburses his retailer for the amount of the retail sales tax imposed upon his vendor with respect to the sale of the property and paid by the vendor to the State.

"(D) Claim for Refund, Credit: Form: Contents: Every claim shall be in writing and shall state the specific grounds upon which the claim is founded.

"(E) Effect of Failure to File Claim: Waiver: Failure to file a claim within the time prescribed in paragraph (B) of this Article constitutes a waiver of any demand against the State on account of overpayment.

"(F) Notice of Disallowance of Claim: Service: Within 30 days after disallowing any claim in whole or in part, the Comptroller shall serve notice of his action on the claimant in the manner prescribed for service of notice of a deficiency determination.

"(G) Interest on Overpayments:

"(1) Interest shall be paid upon any overpayment of any amount of tax at the rate of one-half of 1 per cent per month from the last day of the calendar month following the quarterly period for which overpayment was made.

"(2) The interest shall be paid as follows:

"(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he has not already filed a claim, is notified by the Comptroller that a claim may be filed.

"(b) In the case of a credit to the same date as that which interest is computed on the tax or amount against which the credit is applied.

"(H) Disallowance of Interest: Circumstances: If the Comptroller determines that any overpayment has been made intentionally he shall not allow any interest thereon.

"(I) Injunction: Other Process to Prevent Tax Collection Prohibited: No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or enjoin the collection under this Chapter of any tax or any amount of tax required to be collected.

"(J) Action for Refund: Claim as Condition Precedent: No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

"(K) Action for Refund: Time to sue; venue of action; waiver:

"(1) Within 90 days after the mailing of the notice of the Comptroller action upon a claim filed pursuant to this Chapter, the claimant may bring an action against the Comptroller on the grounds set forth in the claim in a court of competent jurisdiction in Travis County, Texas, for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

"(2) Failure to bring action within the time specified constitutes a waiver of any demand against the State on account of alleged overpayment.

"(L) Right of Action on Failure of Tax to Mail Notice: If the Comptroller fails to mail notice of action on a claim within 6 months after the claim is filed, the claimant may, prior to the mailing of notice by the Comptroller of his action on the claim, consider the claim disallowed and bring an action against the Comptroller on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

"(M) Judgment for Plaintiff: Credits; Refund of Balance:

"(1) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited as follows:

"(a) If the judgment is for a refund of taxes, it shall be credited on

any retail sales or use tax or amount of use tax due from the plaintiff.

"(b) If the judgment is for a refund of use taxes, it shall be credited on any use tax or amount of use tax due from the plaintiff under this Chapter.

"(2) The balance of the judgment shall be refunded to the plaintiff.

"(N) Allowance of Interest: In any judgment, interest shall be allowed at the rate of 6 per cent per annum upon the amount found to have been illegally collected from the date of payment of the amount to date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Comptroller.

"(O) Recovery of Erroneous Refunds: Action; Jurisdiction and Venue: The Comptroller may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed in an action brought, within 1 year from the date of refund or credit, in the name of the State, in a court of competent jurisdiction in the county in which the person involved is located.

"(P) Change of Venue in Action to Recover Erroneous Refund: The action shall be tried in the County in which the person involved is a resident unless the court with the consent of the attorney general orders a change of place of trial.

"(Q) Attorney General to Prosecute Action for Recovery of Erroneous Refund: The attorney general shall prosecute the action, and the provisions of state law and the Rules of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals are applicable to the proceedings.

Art. 20.11. Administration:

"(A) Enforcement by Comptroller: Rules and Regulations:

"(1) The Comptroller shall enforce the provisions of this Chapter and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Chapter.

"(2) The Comptroller may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

"(B) Employment of Accountants, Investigators and Other Persons: Delegation of Authority: The Comptrol-

ler may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this Chapter, and may delegate authority to his representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by this Chapter.

"(C) Records to be Kept by Sellers, Retailers and Others:

"(1) Every seller, every retailer, and every person storing, using or otherwise consuming in this State tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers in such form as the Comptroller may reasonably require.

"(2) Every such seller, retailer or person shall keep such records for not less than 3 years from the making of such records unless the Comptroller in writing sooner authorizes their destruction.

"(D) Examination of Records: Investigation of Business: The Comptroller or any person authorized in writing by him, may examine the books, papers, records and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

"(E) Taxpayers' Right to Keep Records out of State: The taxpayer shall have the right to keep or store his records at a point outside this State, but, if the Comptroller wishes to examine said records, the taxpayer shall either bring the records into the State for such examination, or shall reimburse the Comptroller for the reasonable expense of making the examination at the out of state location.

"(F) Reports for Administering Use Tax: Contents: In administration of the use tax, the Comptroller may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property, the storage, use or other consumption of which is subject to the tax. The report shall:

"(1) Be filed when the Comptroller requires.

"(2) Set forth the names and addresses of purchasers of the tangible personal property, the sales price of

the property, the date of sale, and such other information as the Comptroller may require.

"(G) Disclosure of Information Unlawful: Examination of Records:

"(1) It shall be a misdemeanor for any member or official or employee of the Comptroller to make known in any manner whatever the business affairs, operations or information obtained by an investigation of records and activities or any retailer or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Comptroller.

However, the Comptroller may, by general or special order, authorize examination by other State officers, by tax officers of another state, by the Federal Government, if a reciprocal arrangement exists, or by any other person of the records maintained by the Comptroller under this Chapter.

Nothing herein contained shall be construed to prevent: The delivery to a taxpayer or his duly authorized representative, of a copy of any report or other paper filed by him pursuant to the provisions of this Chapter; the publication of statistics so classified as to prevent the identification of a particular report and the items thereof; the use of such records, reports, or information secured, derived, or obtained by the Attorney General or the Comptroller under the terms of this Chapter in any action against the same taxpayer for a penalty or any tax due under any provisions of this Chapter.

"(2) Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

Art. 20.12. Violations:

"(A) Penalty for Engaging in Business as Seller Without Permit: A person who engages in business as a retailer in this State without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business,

is guilty of a misdemeanor, and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction. Each day of such operation shall constitute a separate offense.

"(B) Penalty for Improper Use of Resale Certificate: Any person who gives a resale certificate to the seller for property which he knows, at the time of purchase, is purchased for the purpose of use rather than for the purpose of resale, lease or rental by him in the regular course of business is guilty of a misdemeanor and such person shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

"(C) Penalty for Failure to Make Return, Furnish Data: Any retailer or other person who refuses to furnish any return required to be made, or who refuses to furnish a supplemental return or other data required by the Comptroller, or who renders a fraudulent return, shall be guilty of a misdemeanor and shall upon conviction be fined not more than Five Hundred Dollars (\$500) for each conviction.

"(D) Penalty for False and Fraudulent Return: Any person required to make, render, sign or verify any report who makes any false or fraudulent return, with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a misdemeanor. He shall for each offense be fined not less than \$300 nor more than \$5,000 or be imprisoned for not exceeding 1 year in the county jail, or be subject to both fine and imprisonment.

"(E) Penalty for Other Violations: Any violation of this Chapter, except as otherwise provided, is a misdemeanor, and any person shall when found guilty of such violation be fined not more than Five Hundred Dollars (\$500) for each violation.

"(F) Statute of Limitations: Any prosecution for violation of any of the penal provisions of this Chapter shall be instituted within 3 years after the commission of the offense.

Art. 20.13. Disposition of Proceeds:

"(A) Special Fund: All fees, taxes, interest and penalties, imposed and all amounts of tax required to be paid to the State under this Chapter shall be paid to the Comptroller in the form of remittances payable to the Comptroller of Public Accounts of Texas. The Comptroller shall transmit all fee

payments and two per cent (2%) of all taxes, interest and penalties collected under this Chapter to the State Treasurer to be deposited in the State Treasury in a special fund to be used for the enforcement and administration of this Chapter and the payment of refunds. All other taxes, interest and penalties collected under this Chapter shall be transmitted by the Comptroller to the State Treasurer to be deposited in the State Treasury to the credit of the General Revenue Fund.

Art. 20.14. Remedies of State are Cumulative: The remedies of the State provided for in this Chapter are cumulative and no action taken by the Comptroller or the Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this Chapter.

Art. 20.15. Comptroller's Authority: In all proceedings under this Chapter the Comptroller may act for and on behalf of the people of the State of Texas.

Art. 20.16. Res Judicata: In the determination of any case arising under this Chapter the rule of res judicata is applicable only if the liability involved is for the same quarterly period as was involved in another case previously determined.

Art. 20.17. Tax Suit Comity: The courts of this State shall recognize and enforce liabilities for sales and use taxes lawfully imposed by any other state, provided that such other state extends a like comity to this State.

"Article II

Section 1. That Article 12.21 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Art. 12.21. Additional Franchise Tax for Years Ending April 30, 1961, April 30, 1962, April 30, 1963, and April 30, 1964:

"(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including

April 30, 1963, and from May 1, 1963, to and including April 30, 1964, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this Chapter for the aforesaid periods by 22.22 per cent.

"(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
\$ 0.00	\$ 20,000.00	\$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

"(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

"(4) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

"(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

"(6) The additional franchise tax levied by this Article shall expire on April 30, 1964."

"Article III

Section 1. Article 13.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Leg-

islature, Third Called Session, 1959, is amended to read as follows:

"Art. 13.02. Amount of Tax:

"(1) Every 'owner' who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any 'coin-operated machine' shall pay, and there is hereby levied on each 'coin-operated machine,' as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of Ten Dollars (\$10.00).

"(2) Provided that nothing herein shall prevent the 'operator' of such machine from paying the tax levied in this Chapter for the account of the 'owner' but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of records required in this Chapter."

"Article IV

Section 1. That Section 19 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2 of Chapter 108, Acts of the 54th Legislature, Regular Session, 1955, be amended so as to hereafter read as follows:

"Sec. 19. Fees for License. The fees as provided for in this Act shall be as follows:

For a chauffeur's license, Six Dollars (\$6.00); for a commercial operator's license Four Dollars and Fifty Cents (\$4.50); and for an operator's license, Three Dollars (\$3.00)."

Section 2. That Section 15 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2(a) of Chapter 1, Acts of the 56th Legislature, Regular Session, 1959, be amended so as to hereafter read as follows:

"All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and Two Dollars (\$2) derived from each chauffeur's license fee, and One Dollar and Fifty Cents (\$1.50) derived from each commercial operator's license fee, and One Dollars (\$1) derived from each operator's license fee shall be deposited in the State Treasury in the General Revenue Fund of the State; and the remainder of all fees so collected shall be deposited in the State Treasury in a fund to be known as

the Operator's and Chauffeur's License Fund.

Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1 of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth hereinabove."

Article V

Section 1. This Act shall be effective from and after September 1, 1961.

Section 2. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict.

Section 3. Application of Chapter: If any provisions of this Chapter or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Chapter, in the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. Emergency Clause: The State of Texas, facing the greatest financial crisis in its history, requires additional revenue to retire the General Fund deficit and to provide money for schools, mental hospitals, medical aid to elder citizens, the prison system, and the orderly operation of state government for a growing population and an expanding economy. Concern for the health and welfare of all the people of Texas must be paramount. Especially is it vital to provide the funds whereby Texas children may receive free public education as promised by the Constitution, which is essential to the future of Texas. This urgent need creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall take

effect and be in force from and after September 1, 1961, and it is so enacted.

The Committee Amendment was read.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend H. B. 334 by striking paragraph (A) of Article 20.01 and inserting in lieu thereof the following:

"(A) Person: 'Person' shall mean and include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, cooperative, assignee, or any other group of combination acting as a unit. 'Person' shall also include the United States or any agency thereof, this state, or any agency hereof, or any city, county, special district, or other political subdivision of this state to the extent engaged in the selling of tangible personal property taxable under this Chapter."

The amendment was adopted.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend H. B. 334 by adding the words "Trailers and Semi-Trailers" immediately after the words "Motor Vehicles" in the third paragraph of subdivision B of Art. 20.04.

The amendment was adopted.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend H. B. 334 by striking the words "Foundation School Fund" and inserting in lieu thereof "General Revenue Fund" in paragraph (A) of Article 20.13.

The amendment was adopted.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend H. B. 334, as amended, Article I, Section 1, by inserting the words "or mining" following the words "used in manufacturing" in the last sentence of the third paragraph of subsection (B) of Article 20.04.

The amendment was adopted.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend House Bill 334, as amended, Article I, section 1, by striking paragraph (H) of Article 20.04 and inserting in lieu thereof the following:

"(H) Written Contracts and Bids Executed Prior to the Effective Date of this Act: There are exempted from the taxes imposed by this Chapter the receipts from the sale, use or rental of, and the storage, use or other consumption in this State of, tangible personal property (i) used for the performance of a written contract entered into prior to the effective date of this Act or (ii) pursuant to the obligation of a bid or bids submitted prior to the effective date of this Act, which bid or bids could not be altered or withdrawn on or after that date and which bid or bids and contract entered into pursuant thereto are at a fixed price not subject to change or modification by reason of a tax imposed by this Chapter.

"Provided, however, that notice of such contract or bid by reason of which an exclusion is claimed under this paragraph (H) must be given by the taxpayer to the Comptroller on or before the lapse of one hundred and twenty (120) days from the date of passage of this Act."

The amendment was adopted.

Senator Lane offered the following amendment to the pending Committee Amendment:

Amend House Bill 334, as amended, Article III, by adding a new section to be called Section 2 to read as follows:

"Section 2. Article 13.03, Title 122A, Taxation — General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Legislature, Third Called Session, 1959, is amended to read as follows:

'Art. 13.03. Exemptions from Tax:

'Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax and 'service coin-operated machines' as that term is defined, are expressly exempt from the tax levied therein,

and the other provisions of this Chapter'."

The amendment was adopted.

Senator Hardeman offered the following amendment to the pending Committee Amendment:

Amend House Bill 334, as amended, by adding a new Article to be appropriately numbered and placed and to read as follows:

"Article —:

Section 1. That Article 3.01 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Art. 3.01. Calculation of Tax:

(1) There is hereby levied an occupation tax on the business or occupation of producing gas within this State, computed as follows:

(a) From the effective date of this Act until September 1, 1963, a tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced;

(b) From and after September 1, 1963, the rate of said tax shall be seven per cent (7%) of the market value of the gas as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and (c) gas used for lifting oil, unless sold for such purposes."

The amendment was read.

Senator Schwartz offered the following amendment to the pending amendment by Senator Hardeman:

Amend pending amendment by Hardeman by striking the words "until September 1, 1963" in Section 1(a) and by deleting the first sentence of sub-section (b) of Section 1. to the first period.

The amendment was read.

Senator Lane moved to table the amendment by Senator Schwartz to

the pending amendment by Senator Hardeman.

Question on the motion to table, Yeas and Nays were demanded.

The motion to table prevailed by the following vote:

Yeas—16

Mr. President	Lane
Calhoun	Parkhouse
Creighton	Patman
Fuller	Reagan
Gonzalez	Roberts
Hazlewood	Smith
Hudson	Weinert
Kazen	Willis

Nays—15

Aikin	Moffett
Baker	Moore
Colson	Owen
Crump	Ratliff
Dies	Rogers
Hardeman	Schwartz
Herring	Secrest
Krueger	

Absent—Excused

Martin

The President announced he would vote "Yea."

Senator Lane then moved to table the pending amendment by Senator Hardeman.

Question on the motion to table, Yeas and Nays were demanded.

The motion to table was lost by the following vote:

Yeas—10

Calhoun	Lane
Creighton	Parkhouse
Fuller	Reagan
Hazlewood	Weinert
Hudson	Willis

Nays—20

Aikin	Moffett
Baker	Moore
Colson	Owen
Crump	Patman
Dies	Ratliff
Gonzalez	Roberts
Hardeman	Rogers
Herring	Schwartz
Kazen	Secrest
Krueger	Smith

Absent—Excused

Martin

Question recurring on the amendment by Senator Hardeman to the Committee Substitute, the amendment by Senator Hardeman was adopted.

Senator Hardeman offered the following amendment to the pending Committee Amendment.

Amend House Bill 334, as amended, by adding a new Article to be appropriately numbered and placed and to read as follows:

"Article —:

"Section 1. Each individual, company, corporation, or association engaged in the business of producing any metal or liquid (except alcoholic beverages, oil, gasoline, or other liquid hydrocarbons) in this State by any chemical, metallurgical, or electrolytic process shall on or before the 25th day of January, April, July, and October of each year make a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation, or association showing the gross amount received from such business for the three calendar months next preceding such report. Said individual, company, corporation, or association, at the time of making said report, shall pay to the Comptroller an occupation tax for the three calendar months next preceding such report equal to one one-hundredths of one per cent (.01 of 1%) of said gross receipts in excess of Two Hundred and Fifty Thousand Dollars (\$250,000.00) as shown by said report. A complete record of the business transacted, together with any other information the Comptroller may require, shall be kept by each individual, company, corporation, or association engaged in said business for a period of two (2) years, open to the inspection of the Comptroller or the Attorney General or their authorized representatives. The Comptroller shall have the authority to adopt rules and regulations for the enforcement of this Act and the collection of the tax levied herein. If any person, company, corporation, or association shall violate any provision of this Act, he or it shall forfeit to the State of Texas, as a penalty, the sum of not less than Twenty-five Dollars (\$25), and not more than Five Hundred Dollars (\$500) for each violation, and each day's violation shall constitute a separate offense, and in addition thereto delinquent taxes shall draw a

penalty equal to one per cent (1%) per month from due date. The state shall be secured for all taxes, penalties, interest and costs due by a preferred lien, first and prior to any and all other existing liens, contractual or statutory, legal or equitable upon all the property used by the taxpayer in his or its business."

The amendment was read.

Senator Lane moved to table the amendment by Senator Hardeman.

Question on the motion to table, Yeas and Nays were demanded.

The motion to table prevailed by the following vote:

Yeas—16

Baker	Moffett
Calhoun	Owen
Creighton	Patman
Fuller	Ratliff
Gonzalez	Reagan
Hazlewood	Rogers
Hudson	Schwartz
Lane	Willis

Nays—14

Aikin	Krueger
Colson	Moore
Crump	Parkhouse
Dies	Roberts
Hardeman	Secrest
Herring	Smith
Kazen	Weinert

Absent—Excused

Martin

Senator Parkhouse offered the following amendment to the pending Committee Amendment:

Amend House Bill No. 334, as amended, to include a new Article to be appropriately numbered and placed, and to read as follows:

Article

Amend Articles 23.02 of Title 122A, Taxation General, of the Revised Civil Statutes of Texas of 1925 to read as follows:

(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of Two Dollars (\$2) or more per day, such tax to be equal to two per cent (2%) of the consideration paid by the occupant of such room to such hotel.

(b) No tax shall be imposed hereunder upon a permanent resident.

(c) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

The amendment was read.

Senator Lane moved to table the amendment by Senator Parkhouse to pending Committee Amendment.

Question of the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—18

Aikin	Krueger
Calhoun	Lane
Colson	Owen
Creighton	Patman
Dies	Ratliff
Fuller	Reagan
Gonzalez	Secrest
Hazlewood	Weinert
Herring	Willis

Nays—12

Baker	Moore
Crump	Parkhouse
Hardeman	Roberts
Hudson	Rogers
Kazen	Schwartz
Moffett	Smith

Absent—Excused

Martin

Senator Gonzalez offered the following amendment to the pending Committee Amendment:

Amend Committee Amendment to H. B. 334 by adding the following Article V and renumbering present Article V and succeeding Articles accordingly:

ARTICLE V

Section 1. Chapter 22 of Title 122A, Revised Civil Statutes of Texas, as enacted by the Fifty-sixth Legislature, Third Called Session, 1959, Chapter 1, Section 1, is hereby amended to read as follows:

Chapter 22

SEVERANCE BENEFICIARY TAX

Art. 22.01. (1) In addition to the oc-

upation tax on Producers of Natural Gas levied by Chapter 3 of Title 122A, Taxation—General, of the Revised Civil Statutes of Texas, there is hereby levied an occupation tax on the occupation or privilege of obtaining the production of Dedicated Gas within this State, and on the business or occupation of producing such gas, to be known as the "Severance Beneficiary Tax," and to be computed as follows:

The rate of said tax shall be two per cent (2%) of the market value of the gas as and when produced.

Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of One Cent (1¢) per one thousand (1,000) cubic feet.

In calculating the tax herein levied, there shall be excluded: (1) gas injected into the earth in this State, unless sold for such purpose; (2) gas produced from oil wells with oil and lawfully vented or flared; and (3) gas used for lifting oil, unless sold for such purposes.

(2) The market value of gas produced in this State shall be the value thereof at the mouth of the well; however, in case gas is sold for cash only, the tax shall be computed on the producer's gross cash receipts. In all cases where the whole or a part of the consideration for the sale of gas is a portion of the products extracted from the producer's gas or a portion of the residue gas, or both, the tax shall be computed on the gross value of all things of value received by the producer, including any bonus or premium; provided that notwithstanding any other provision herein to the contrary, where gas is processed for its liquid hydrocarbon content and the residue gas is returned by cycling methods, as distinguished from repressuring or pressure maintenance methods, to some gas producing formation, the taxable value of such gas shall be three-fifths (3/5) of the gross value of all liquids extracted, separated and saved from such gas, such value to be determined upon separation and extraction and prior to absorption, refining or processing of such hydrocarbons and such value prior to refining shall be the value of the highest posted price of crude oil in the field where said gas is produced or in the nearest oil field in the event no oil is produced in said field and the quantity of the products shall

be measured by the total yield of the processing plant from such gas.

(3) All condensate recovered from gas shall be taxed at the same rate as oil and shall be valued for the purpose of computing the tax due thereon at the prevailing market price for condensate in the general area where the same is recovered. The term "condensate" shall include all liquid hydrocarbons that are or can be recovered from gas by means of a separator but shall not include any liquid hydrocarbons which can only be recovered from gas by refrigeration or absorption and separated by a fractionating process.

Where additional liquid hydrocarbons other than condensates are recovered from gas the taxable value of such additional liquid hydrocarbons shall be determined by deducting from the total receipts of the producer for all liquid hydrocarbons recovered from his gas the taxable value assigned to the condensate and the applicable rate set forth in subsection (1) of this Section 1 shall be applied to the difference to determine the tax due hereunder on such additional hydrocarbons.

(4) The tax hereby levied is an occupation tax on the occupation or privilege of obtaining the production of "dedicated gas" and on the business or occupation of producing such gas as a "severance beneficiary," as these terms are defined herein.

(5) The tax hereby levied shall be a liability of the producer of gas, but if produced for or sold to a severance beneficiary other than the producer, the tax shall be paid by the severance beneficiary. The liability of the producer shall end only upon payment of the tax by the severance beneficiary, and until such time they shall be jointly liable for payment; provided, however, that on gas sold to a severance beneficiary and reported properly to the Comptroller of Public Accounts of Texas, the producer shall never be required to make such payments unless the severance beneficiary fails to pay the tax or is held by final court order not to be liable for such payment. In no event shall the severance beneficiary deduct, charge, or collect the tax hereby levied from his payments to the producer, and no contract or agreement heretofore or hereafter made shall be interpreted as requiring the producer to pay any portion of the tax which is the liability

of the severance beneficiary under the provisions of this Act. It is hereby declared to be against the public policy of this State, and to contribute to economic and actual waste, and to be an unlawful limitation upon the conservation and taxing powers of the State of Texas, for any contract to require the producer to pay the severance beneficiary tax hereby levied when there is a severance beneficiary as defined herein other than the producer himself; it being the intention of this Act that the producer shall be required to pay the tax hereby levied only if the gas is produced for his own use or independent sale and not under any prior contract to produce for sale to another, or if the severance beneficiary is declared by final court judgment not to be liable for the tax hereby levied. It shall be the duty of each producer to keep accurate records in Texas of all gas produced and to make monthly reports under oath as hereinafter provided.

(6) The first purchaser of gas shall pay the tax on gas purchased, and unless he is the severance beneficiary, shall deduct the tax so paid from the payment due the producer making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Such monies so deducted from payments due for the payment of this tax shall be held by the purchaser in trust for the use and benefit of the State of Texas and shall not be commingled with any other funds held by such said purchaser, and shall be remitted to the State Treasurer in accordance with the terms and provisions of this Act; and it shall be the duty of each such purchaser to keep accurate records in Texas of all such gas purchased or obtained as hereinafter provided and to make and deliver to the Comptroller verified monthly reports thereof.

(7) The tax herein levied shall be due and payable at the Office of the Comptroller at Austin on the last day of the calendar month, based on the amount of gas produced and saved during the preceding calendar month, and on or before said date each producer and severance beneficiary and first purchaser shall make and deliver to the Comptroller a verified report on forms prescribed by the Comptroller showing the gross amount of gas produced and purchased, less the exclusions and at the pressure base

set out herein, upon which the tax herein levied accrues, together with details as to amounts of gas, from what leases said gas was produced, the correct name and address of the severance beneficiary, and first purchaser and such other information as the Comptroller may desire, such report to be accompanied by legal tender or cashier's check payable to the State Treasurer for the proper amount of taxes herein levied.

(8) Provided, that unless such payment of tax on all gas produced during any month or fractional part thereof shall be made on or before the date due as hereinabove specified, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

Art. 22.02. (1) For the purpose of this Act, producer shall mean any person (other than a non-operating royalty owner) owning, controlling, managing, or leasing any gas well or land producing gas, and any person who produces in any manner any gas by taking it from the earth or waters in this State.

(2) "First Purchaser" shall mean any person purchasing gas from the producer or from a severance beneficiary. In the event there is no "first purchaser" or severance beneficiary, then the producer shall be deemed the purchaser and pay the tax levied by this Act.

(3) "Dedicated Gas" shall include all gas produced and saved in this State covered by any purchase contract, option, or agreement by which gas is to be produced for, sold to, or used by a severance beneficiary, as herein defined, or gas produced and saved by the producer thereof when there is no other severance beneficiary.

(4) "Severance Beneficiary" shall mean any person for whom gas is produced and to whom it is first sold by the producer under a dedication contract or under any other agreement of sale made prior to the production thereof under which a person acquires dedicated gas reserves in this State or exclusive or beneficial rights in gas under the earth or waters of this State. A person purchasing gas pursuant to such a contract shall be deemed to be engaged in ob-

taining the production of dedicated gas in this State, which is a valuable occupation or privilege for which the tax is levied; provided, however that a producer producing gas for his own use or for sale and not subject to a contract as described above, shall be considered a severance beneficiary for the purposes of this Act.

(5) "Gas" shall mean natural and casing-head gas or other gas taken from the earth or waters, regardless of whether produced from a gas well or from a well also productive of oil, distillate and/or condensate, or other product.

(6) The term "sweet gas" shall mean all natural gas except sour gas and casing-head gas.

(7) The term "sour gas" shall mean any natural gas containing more than one and one-half (1½) grains of hydrogen sulphide per hundred (100) cubic feet, or more than thirty (30) grains of total sulphur per one hundred (100) cubic feet.

(8) The term "casing-head gas" shall mean any gas and/or vapor indigenous to an oil stratum and produced from such stratum with oil.

(9) "Report" shall mean any report required to be furnished in this Act or that may be required by the Comptroller in the administration of its provisions.

(10) "Person" shall include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(11) "Production" or "total gas produced" shall mean the total gross amount of gas produced. The tax imposed by this Act shall be measured or determined by meter readings showing one hundred (100) per cent of the full volume expressed in cubic feet.

(12) For the purposes of this Act, the term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas (including natural and casing-head) contained in one cubic foot of space at a standard pressure base and at a standard temperature base. The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. Whenever the conditions of pressure and temperature differ from the

above standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the Ideal Gas Laws, corrected for deviation.

(13) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

Art. 22.03. (1) When it shall appear that a taxpayer to whom the provisions of this Act shall apply has erroneously paid more taxes than were due during any taxpaying period either on account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.

(2) The failure of a severance beneficiary who is not the producer, or of a first purchaser, to pay the severance beneficiary tax shall not relieve any subsequent purchaser from the payment of same, and it shall be the duty of every person purchasing gas produced in Texas to satisfy himself or itself that the tax on said gas has been or will be paid by the persons primarily liable therefor.

Art. 22.04. The Comptroller shall employ auditors and/or other technical assistants for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid. He shall have the power to enter upon the premises of any taxpayer liable for a tax under this Act, and any other premises necessary in determining the correct tax liability, and to examine, or cause to be examined, any books, or records of any persons, subject to a tax under this Act, and to secure any other information directly or indirectly concerned in the enforcement of this Act, and to promulgate and enforce, according to law, rules and regulations pertinent to the enforcement of this Act, which shall have the full force and effect of law. Before any division or allotment of the occupation tax collected under the provisions of this Act is made, one-half ($\frac{1}{2}$) of one (1) per cent of the gross amount of said tax shall be set aside in the Treasury for the use of the Comptroller in the administration and enforcement of the provisions of this Act; and so much of the said proceeds of one-half ($\frac{1}{2}$) of one (1) per cent of the occupation tax paid

monthly as may be needed in such administration and enforcement is hereby appropriated for such purpose, subject however to appropriation by the Legislature.

Art. 22.05. In the event any severance beneficiary or first purchaser of gas in this State shall become delinquent in the payment of the proper taxes herein imposed, or fails to file required reports with the Comptroller, the Attorney General by a suit in the name of the State of Texas shall have the right to enjoin such persons from producing and/or purchasing gas until the delinquent tax is paid or said reports filed, and the venue of any such suit for injunction is hereby fixed in Travis County.

Art. 22.06. Severance beneficiaries, first purchasers and producers shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00) for failure or omission to keep the records required herein, or for the violation of any of the other provisions hereof, and each day's violation shall constitute a separate offense. The State shall have a prior lien for all delinquent taxes, penalties and interests on all property and equipment used by a severance beneficiary or first purchaser of gas in his business of producing gas or purchasing gas, and if any severance beneficiary or first purchaser of gas shall fail to remit the proper taxes, penalties, and interest due, or any of them, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and the severance beneficiary and first purchaser of gas shall be liable, as additional penalty, for the reasonable expenses or the reasonable value of such services of representatives of the Comptroller incurred in such investigation and audit; provided, that all funds collected for audits and examinations shall be placed in the Natural and Casinghead Gas Audit Fund in the State Treasury and shall constitute a revolving fund which may be used from time to time by the Comptroller in making such audits in addition to the general appropriation made for such purposes, and all of said funds to be placed in said Natural and Casinghead Gas Audit Fund are hereby appropriated for such purpose. The Attorney General shall file suit in the name of the State of Texas for all delinquent taxes, penalties, and other amounts due, and for

the enforcement of all liens under this law; and the venue of any such suit is hereby fixed in Travis County.

Art. 22.07. (1) If any severance beneficiary or first purchaser of gas fails or refuses to pay any tax, penalty, or interest within the time and manner provided by this Act and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claim in any judicial proceedings, any report filed in the office of the Comptroller by such severance beneficiary or first purchaser or representative of said severance beneficiary or purchaser, or a certified copy thereof certified to by the Comptroller of Public Accounts showing the amount of gas produced on which tax, penalties or interest have not been paid, or any audit made by the Comptroller or his representative from the books of said severance beneficiary or purchaser when filed and sworn to by such representative as being made from the records of said severance beneficiary or first purchaser, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however, that the incorrectness of said report or audit may be shown; provided, further, that such report or audit may be admitted in evidence only against the party by or from whom it was made.

(2) In the event the Attorney General shall file suit or claim for taxes, provided for in the foregoing, and attach or file as an exhibit any report or audit of said severance beneficiary or first purchaser, and an affidavit made by the Comptroller or his representative that the taxes shown to be due by said report or audit are past due and unpaid, and that all payments and credits have been allowed, then, unless the party resisting the same shall file an answer in the same form and manner as required by Article 3736, Revised Civil Statutes of Texas of 1925, as amended by Chapter 239, Acts of the Regular Session of the Forty-second Legislature, said audit or report shall be taken as prima facie evidence thereof, and the proceedings of said Article are hereby made applicable to suits to collect taxes hereunder.

(3) On notice from the State Comptroller, it shall be unlawful for any person to produce or remove any gas from any lease in this State when-

ever the severance beneficiary, first purchaser or producer has failed to file reports as required under the provisions of this Act.

(4) Whenever any lease producing gas changes hands, it shall be the duty of the owner or operator of said lease to note on his last report that said lease has been sold or transferred, showing the effective date of said change and the name and address of the person who will operate said lease and be responsible for the filing of reports provided for in this Act. It further shall be the duty of the new owner or operator of said lease to note on his first report that said lease has been acquired, showing the effective date of said change and the name and address of the person formerly owning and/or operating said lease.

Section 2. If any article, section, paragraph, sentence, phrase or word of this Act, or the application thereof to any person or circumstances, is declared to be invalid, the remaining provisions of this Act shall be unaffected thereby and the Legislature hereby declares that it would have passed the remaining provisions without the invalid provisions, and to these ends the provisions of this Act are declared to be severable.

Section 3. After the allocation for the benefit of the public free schools required by Section 3 of Article 7 of the Constitution of Texas has been made, all revenues derived from and collected under this Article shall be paid into the General Revenue Fund of the State.

On motion of Senator Gonzalez and by unanimous consent, the reading of the amendment was dispensed with and he explained the amendment.

(Pending discussion by Senator Gonzalez of his amendment, Senator Owen occupied the Chair.)

(Senator Fuller in the Chair.)

(Pending further discussion by Senator Gonzalez of his amendment Senator Owen occupied the Chair.)

(Senator Dies in the Chair.)

(Pending further discussion by Senator Gonzalez of his amendment, Senator Owen occupied the Chair.)

(President in the Chair.)

Question on the adoption of the

amendment by Senator Gonzalez to the pending Committee Amendment, yeas and nays were demanded.

Senator Lane moved to table the amendment by Senator Gonzalez to the pending Committee Amendment.

Question on the motion to table, yeas and nays were demanded.

The amendment was tabled by the following vote:

Yeas—19

Baker	Moffett
Calhoun	Owen
Creighton	Parkhouse
Crump	Ratliff
Dies	Reagan
Fuller	Roberts
Hardeman	Secrest
Hazlewood	Smith
Lane	Willis
Martin	

Nays—9

Aikin	Krueger
Colson	Patman
Gonzalez	Rogers
Herring	Schwartz
Kazen	

Absent

Hudson	Weinert
Moore	

Senator Owen offered the following amendment to the pending Committee Amendment:

Amend H. B. 334 as amended, Section (D)(1) "Receipts," second line of the printed bill after the word "retailers" the following:

"or of sales to an ultimate consumer although at wholesale,"

The amendment was read.

Senator Lane moved to table the amendment by Senator Owen to the pending Committee Amendment.

Question on the motion to table, yeas and nays were demanded.

The motion to table prevailed by the following vote:

Yeas—19

Baker	Hardeman
Calhoun	Hazlewood
Creighton	Hudson
Fuller	Kazen

Lane	Reagan
Martin	Roberts
Moffett	Secrest
Parkhouse	Smith
Patman	Willis
Ratliff	

Nays—10

Aikin	Herring
Colson	Krueger
Crump	Owen
Dies	Rogers
Gonzalez	Schwartz

Absent

Moore	Weinert
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Senator Aikin offered the following substitute for the pending Committee Amendment as amended:

Substitute for Committee Amendment No. 1, to H. B. 334 as amended:

Amend House Bill 334 by striking out all below the enacting clause and substituting in lieu thereof the following:

Article I

Miscellaneous Excise Taxes

Section 1. Article 20.01 (c), (g), (i), (j), (k), and (p) of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, are hereby amended to read as follows:

"(c) 'Retailer' means every person in this State who manufactures, produces, distributes or in any other manner acquires or possesses any of the items taxable under this Chapter for the purpose of making a resale, distribution, lease, rental or use of the same in this State to a purchaser or user; and 'retailer' also includes every person in this State who ships, transports or imports into this State any item taxable under this Chapter and makes the first distribution of, use by, and lease, rental or sale to a purchaser or user of same in this State.

"When he determines that it is necessary for the efficient administration of this Chapter, the Comptroller may regard any salesman, representative, peddler or canvasser as the agent of the dealer, distributor, supervisor or employer under whom he operates or from whom he obtains the items taxable under this Chapter sold by him, whether he is making sales on his own behalf or on behalf of such dealer, distributor, supervisor or em-

ployer, as a retailer for the purposes of this Chapter. Every manufacturer, wholesaler, distributor or other person who sells, leases or rents tangible personal property to a user, or who himself makes a taxable use thereof, shall be considered a 'retailer' for the same purpose.

"(g) 'Phonographs' means the apparatus or devices, either mechanical or electrical, commonly known and sold as phonographs, including record players, high-fidelity phonographs, stereophonic phonographs, and music coin-operated machines and also includes all sub-assemblies, devices, or instruments designed for the reproduction of sound from tuning devices, recordings of tape, records or wire; devices designed for the amplification of sound received or reproduced by such devices; or one or more devices designed to be used in conjunction with other devices which when combined will constitute a device defined as a phonograph under this Chapter. The term 'music coin-operated machine' means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, radios, and all other coin-operated machines which dispense or vend music.

"(i) 'Air conditioner' means any unit, apparatus, device, or air-treating combination consisting of means for ventilation, air circulation, air cleaning, and heat transfer with control means for maintaining temperatures and humidity within prescribed limits, commonly known, sold and used as an air conditioner and includes any instrument, apparatus or mechanical contrivance designed, constructed or assembled as part of any such unit, apparatus or device to cool or assist in the cooling of air in any manner. The term air conditioner also includes all sub-assemblies, devices, units, instruments, cooling towers, thermostats, condensers, compressors, filters, blowers, cooling coils, motors and heat pumps, which when combined or connected as a functioning unit, apparatus or device constitute an air conditioner. The term air conditioner, however, does not include (1) any wiring, pipe, or other material required for installation, (2) any ductwork, enclosure, structure or part of

a structure designed, constructed or made for the purpose of channeling air to or from any air conditioner and (3) any buzz fan or any other apparatus, device or system designed and used only to circulate or move air, except when the same is a functioning part of a larger unit defined in this Chapter as an air conditioner.

"(j) 'Motor or power driven objects and component parts' means all motor or power operated vehicles, including house trailers, trailers and semi-trailers in or by which any person or property is or may be transported upon a public highway, machines, tools, fixtures, instruments, appliances and other objects whether for, or capable of, commercial, professional, personal or household use, including every object of tangible personal property operated by, or capable of operation by, electricity, batteries, natural gas, gasoline, liquefied petroleum gas such as butane and propane, diesel or any other fuel or source of power, and includes all motors, parts, components, articles, tires, tubes and accessories designed, constructed or sold to be attached to, used, or capable of being used or attached as a part of any motor or power driven object, whether or not essential to its operation or use.

"(k) 'Construction materials' means any item of stone, wood, metal, plastic, paper, glass, clay or any other substance or combination of substances designed, constructed, manufacturer, sold for use, capable of being used, or used as part of the construction or repair of buildings, warehouses, houses, or any other building, structure or enclosure, pipe-line, derricks, fences, towers, tanks, roads, highways, streets, drilling rigs, or in the drilling and production of wells or mines for water, oil, natural gas, or other minerals, or for the storage, refining or transportation thereof, and every other type of object or structure, including but not limited to lumber, paint, varnish, brick, stone, iron, aluminum, tin, cement, drilling mud, sand, shell, gravel, wire, pipe, nails and fasteners of all types, hardware, electrical and plumbing fixtures, and glass whether used for such purpose or not.

"(p) 'Purchaser' or 'user' means any person who acquires, for a consideration, the ownership, custody, use or possession by sale, lease, rental or otherwise, of items taxable under this

Chapter for any purpose other than resale. 'Purchaser' or 'user' includes any person who manufactures, produces or in any other manner acquires or possesses an item taxable under this Chapter for his own use or consumption and not for the purpose of making a resale, distribution, lease or rental of the same while still in the form of tangible personal property."

Section 2. Article 20.01 of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session 1959, is hereby amended by adding thereto the following sub-sections (s), (t), (u), (v) and (w):

"(s) 'Lease' or 'rental' means the transferring, conveying or granting for a term and for a consideration, of any item taxable under this Chapter to any user, except such items as may be rented or leased incidental to and as part of furnishings or fixtures of a dwelling, office or other real estate where there is no separate consideration or contract for the use of such incidental items.

"(t) 'Rental price' or 'lease price' means the total amount for which any item taxable under this Chapter is rented or leased, valued in money, whether paid in money or otherwise, without any deduction being made therefrom for cost of the item rented or leased; the cost of material used; labor or service cost; interest charged; losses; or any other expenses; and the cost of transportation of the item at any time. The rental price or lease price includes any services which are a part of the lease or rental contract and any credit given to the lessee or rentee by the lessor or rentor.

"(u) 'Jewelry, watches, clocks, binoculars, precious or semi-precious stones, articles made or precious metals and articles made of fur on the hide or pelt' means (1) all articles commonly or commercially known as jewelry, whether real or imitation; (2) the following stones, by whatever name called whether real or synthetic: (a) Amber; (b) Beryl of the following types: Aquamarine, Emerald, Golden Beryl, Heliodor, Morganite; (c) Chrysoberyl of the following types: Alexandrite, Cat's eye, Chrysolite; (d) Corundum of the following types: Ruby, Sapphire; (e) Diamond; (f) Feldspar of the following type: Moonstone; (g) Garnet; (h) Jadite (Jade); (i) Jet; (j) Lapis Lazuli; (k) Naph-

rite (Jade); (l) Opal; (m) Pearls (natural or cultured); (n) Peridot; (o) Quartz of the following types: Amethyst, Bloodstone, Citrine, Moss Agate, Onyx, Sardonyx, Tiger-eye; (p) Spinel; (q) Topaz; (r) Tourmaline; (s) Turquoise; (t) Zircon; (3) articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof; (4) watches; (5) clocks; (6) cases and movements for watches and clocks; (7) gold, gold-plated, silver or sterling silver flatware or hollow ware and silver-plated hollow ware; (8) opera glasses and lorgnettes; (9) marine glasses; (10) field glasses; (11) binoculars; (12) articles made of fur on the hide or pelt; and (13) articles of which such fur is the component material of chief value, but only if such value is more than three times the value of the next most valuable component material.

"(v) 'Alcoholic beverages' means (1) distilled spirits, including alcohol, spirits of wine, whisky, rum, brandy, gin, and any liquor produced in whole or in part by the process of distillation, including all dilutions and mixtures thereof; (2) Wine and vinous liquor, including the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits or berries; (3) Ale and malt liquor, including any malt beverage containing more than four per cent (4%) of alcohol by weight; and (4) Beer, including any malt beverage containing one-half of 1% or more of alcohol by volume and not more than four per cent (4%) of alcohol by weight, and shall not include any beverage designated by label or otherwise by any other name than beer.

"(w) 'Tangible personal property' means any item of personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses."

Section 3. Article 20.03 of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

"Article 20.03 Tangible Personal Property:

"(a) There is hereby levied and shall be imposed an excise tax equivalent to two per cent (2%) of the retail sales price for which the follow-

ing services and items of tangible personal property are sold:

"1. Motor or power driven objects and component parts;

"2. Construction materials;

"3. Alcoholic beverages; and

"4. All other items of tangible personal property sold for a retail sales price of Ten Dollars (\$10.00) or more. The tax levied herein applies to retail sales of individual items of tangible personal property except when two or more separate items (other than food for human consumption, feed for animals, and fertilizer) each of which sells for a retail sales price or has a value of less than Ten Dollars (\$10.00) and sold together as pairs, suits, suites, sets or matching parts of the same purchase, or sold in bulk measurements, sealed cans, cartons, boxes or other containers at a total unit price of Ten Dollars (\$10.00) or more, the tax shall be computed and shall be paid upon the entire amount of the purchase. It shall be unlawful for any retailer, purchaser or user to intentionally break or separate items customarily sold together as a unit or as a whole with intent to evade the provisions of this Article.

"(b) From and after the effective date of this Chapter every purchaser or user who imports or in any manner acquires for use in this State any of the items taxable under this Article upon which such tax has not theretofore been paid to the State of Texas shall, for the purposes of this Chapter be considered as a retailer and shall report and pay the tax equal to two per cent (2%) of the retail sale, lease or rental price thereof, whichever is applicable, to the State of Texas at the time and in the manner hereinafter provided.

"(c) There is also hereby levied and shall be imposed an excise tax equivalent to two per cent (2%) of the lease or rental price for which any item taxable under this Chapter is leased or rented for use within this State.

"(d) Every retailer, lessor or rentor shall add the excise taxes imposed by this Article to the retail sales, rental or lease price, and the excise tax must be displayed separately from the list price, rental or lease price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sale, lease or rental. When added the excise tax shall constitute a part of

the retail sales, lease or rental price, shall be a debt of the purchaser to the retailer, lessor or rentor and shall be recoverable at law in the same manner as the retail sales, lease or rental price.

"(e) The taxes in the amount levied in this Article upon retail sales of motor vehicles shall be collected in accordance with the procedures and provisions contained in Chapter 6 of Title 122A.

"(f) Exceptions. It is expressly provided, however, that the taxes imposed by this Article shall not apply to the following tangible personal property:

"1. Any item on which a tax is levied by any other Article of this Chapter.

"2. The retail sale, use, storage or other consumption by manufacturers or processors of any item taxable under this Article which becomes a component part of manufactured or processed tangible personal property intended for ultimate sale at retail either within or outside the State of Texas.

"3. The retail sale or use of any item taxable under this Article which the State of Texas is prohibited from taxing under the Constitution of the United States or of this State.

"4. The retail sale or use of any motor or power driven objects and component parts to be used or consumed as farm machinery directly in the planting, cultivation or harvesting of farm crops or pastures.

"5. The retail sale or use of any aircraft, sea going vessel or other transportation equipment to persons using such items as certified or licensed carriers of persons or property in interstate or foreign commerce under authority of the laws of the United States or any foreign government or sold to any foreign government for use by such government outside of this State."

Section 4. Article 20.06½ of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended and renumbered to read as follows:

"Art. 20.061 Jewelry, watches, clocks, binoculars, precious or semi-precious stones, articles made of precious metals and articles made of fur on the hide or pelt.

"There is hereby levied and imposed upon the sale, distribution or

use of jewelry, watches, clocks, binoculars, precious or semi-precious stones, articles made of precious metals and articles made of fur on the hide or pelt in this State an excise tax equivalent to three per cent (3%) of the retail price for which such items are sold.

"From and after the effective date of this Article, every person who imports or in any other manner acquires for use in this State any item taxable under this Article upon which said tax has not theretofore been paid to the State of Texas shall for the purposes of this Article be considered as a retailer and shall report and pay said tax equal to three per cent (3%) of the retail price thereof to the State of Texas at the time and in the manner hereinafter provided."

Section 5. Article 20.09 of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended so as to read as follows:

"Article 20.09. Payment of Tax, Reports Required:

"(a) Every retailer who shall be required to collect any of the taxes imposed by this Chapter upon the sale, lease, rental, use or distribution of any of the items taxable under this Chapter in this State, or who shall be required to pay the tax levied herein upon any item taxable under this Chapter used by said retailer shall on or before the twenty-fifth (25th) day of January, April, July and October of each year, remit or pay over to the Comptroller of the State of Texas, ninety-nine per cent (99%) of the amount of tax or taxes required to be collected during the quarter immediately preceding, one hundred per cent (100%) of the amount of tax or taxes required to be paid for items taxable under this Chapter which are used by said retailer during said period. Provided, however, that this discount shall be allowed only when a retailer files the report and pays the amount of tax due within the time specified for such report and payment. At the time of payment of the tax or taxes due, each retailer shall also make and deliver to the Comptroller a report, which shall show the date such report was executed, the name and address of said retailer, the quarter which the report covers and such other information as

the Comptroller may deem necessary to enforce the provisions of this Chapter. Provided, that where a retailer has not sold, leased, rented, distributed, or used any taxable items during any quarter or part thereof, he shall nevertheless file with the Comptroller the report required herein setting forth such fact or information. Provided, further, that the Comptroller may prepare and furnish a form prescribing the order in which the information required by this chapter or such other information as the Comptroller may require under the provisions of this Chapter shall be contained in said quarterly report, but the failure of any retailer to obtain such form from the Comptroller shall be no excuse for the failure to file a report containing all the information required to be reported herein or required by the Comptroller as provided herein. Every retailer, at the time of making said report, shall attach legal tender thereto or make proper form of money order or exchange payable to the State Treasurer in the amount of tax for the period covered by the report.

"(b) If any retailer shall fail to remit proper taxes collected upon the sale, lease, rental, use or distribution of any item taxable under this Chapter, the Comptroller may employ auditors or other persons to ascertain the correct amount due, and if such taxes have not been properly remitted and paid to the State of Texas, the retailer shall pay as additional penalty any reasonable expenses incurred by the Comptroller in such audit."

Section 6. Article 20.11 of Chapter 20, Title 122A, Revised Civil Statutes of Texas as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended so as to read as follows:

"Article 20.11. Permits Required:

"(a) From and after the effective date of this Chapter, all retailers of items taxable under this Chapter in this state now engaged or who desire to become engaged in the sale, lease, rental, use of distribution of items taxable under this Chapter, and who do not have a previously obtained retailer's permit, shall file a duly acknowledged application with the Comptroller for a retailer's permit, which shall be non-assignable, said application to be accompanied by a fee of Five Dollars (\$5.00). Said application shall be on a form pre-

scribed by the Comptroller, to be furnished upon written request, but the failure to furnish such form shall be no excuse for the failure to file the same unless an absolute refusal is shown. An application shall be filed and a permit obtained for each place of business owned or operated by a retailer. Said form shall set forth the name under which such retailer transacts or intends to transact such business as a retailer, the principal office, residence or place of business in Texas, and if other than an individual, the principal officers of a corporation or the members of a partnership or association and their office, street or post office address. The Comptroller may require in said application such other information as he may desire. No retailer shall make a sale, lease, rental, use or distribution of any item taxable under this Chapter until such application has been filed and a permit has been obtained.

"(b) Upon receipt of the application the Comptroller shall issue to every such retailer a non-assignable, consecutively numbered permit authorizing the sale, lease, rental, use or distribution of items taxable under this Chapter in this state from the date of the issuance of said permit, until and including the following September 30th. On or before October 1st of each year, and before any retailer shall make a sale, lease, rental, use or distribution of items taxable under this Chapter or engage in selling, leasing, renting, using or distributing items taxable under this Chapter in this State after September 30th, an application shall be filed and a permit obtained. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this Chapter, or any rule or regulation adopted by the Comptroller. If such permit is cancelled or suspended, said retailer shall not sell, lease, rent, use or distribute such items upon which a tax is required to be paid until a new permit is granted or the original permit is reinstated. Provided, however, that no permit shall be issued or reinstated where it appears from a duly verified audit made as herein provided by an authorized representative of the Comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this Chapter.

"(c) Permits issued at the time of the effective date of this Act and

said to expire on August 31, 1961, or hereafter issued to expire on August 31, 1961, shall, unless otherwise provided by the Comptroller by rule or regulation, continue in full force and effect through September 30, 1961."

Section 7. Article 20.14 of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

"Article 20.14. Retention of Records:

"Every retailer and utility shall keep in Texas for a period of two (2) years for the inspection at all times of the Comptroller and the Attorney General or their authorized representatives, a complete record of all purchases of items taxable under this Chapter, and his records shall show the date of receipt, the name and address of the person from whom purchased, the means of delivery, and the quantity in units and value of all such items taxable under this Chapter. Also it shall show all sales, leases, rentals, uses and distribution of the same as and when made from stocks on hand or direct from the manufacturer. In all instances where a sale, lease, rental, use or distribution of any items taxable under the provisions of this Chapter is claimed to be exempt from taxation, the retailer shall keep a record of such sales, leases, rentals, uses or distributions which shall show the name and address of the purchaser, lessor, rentor or user and the quantity in units and value of all such items claimed to be exempt."

Section 8. Article 20.18 of Chapter 20, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

"Article 20.18. Penalties.

"(a) If any person affected by this Chapter (1) shall fail to pay to the State of Texas any tax due and owing under the provisions of this Chapter; or (2) shall fail to keep for the period of time provided herein any books or records required to be kept; or (3) shall mutilate, destroy, secrete or remove from this State, any such books or records; or (4) shall refuse to permit the Comptroller, the Attorney General, or their authorized representative to inspect and examine any

books or records, incident to the conduct of his business that may be kept, or (5) shall make, deliver to, and file with the Comptroller a false or incomplete return or report; or (6) shall refuse to permit the Comptroller or his authorized representatives, to inspect any premises where items taxable under this Chapter are produced, made, assembled, stored, transported, sold or offered for sale, lease, rental or exchange; or (7) shall fail to make and deliver to the Comptroller any return or report required herein to be made and filed; or (8) shall fail or refuse to comply with any provision of this Chapter or shall violate the same; (9) shall break or separate items customarily sold together as a unit or as a whole with intent to evade the tax levied by Article 20.03(a)4; or (10) shall fail to comply with any rule and regulation promulgated hereunder by the Comptroller or violate the same, he shall forfeit to the State of Texas as a penalty the sum of not less than Twenty-Five Dollars (\$25) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty which, if not paid shall be recovered in a suit by the Attorney General in a court of competent jurisdiction in Travis County, Texas, or in any other court of competent jurisdiction having venue under existing venue Statutes. Provided that in addition to the penalties shown, if any retailer does not make remittance for any taxes collected, or pay any taxes due the State of Texas by said retailer, within the time herein prescribed, said retailer shall forfeit to the State two per cent (2%) of the amount due and after the first ten (10) days, he shall forfeit an additional eight per cent (8%). Delinquent taxes and penalties shall draw interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from date due.

"(b) The venue of any suit, injunction, or other proceeding at law or in equity available for the establishment or collection of any claim for delinquent taxes, penalties or interest accruing hereunder and the enforcement of the terms and provisions of this Chapter, shall be in a court of competent jurisdiction, in Travis County, Texas, or in any other court having venue under existing venue Statutes."

Section 9. Chapter 20 of Title 122A, Revised Civil Statutes of Texas, as

enacted by Section 1, Chapter 1, Acts of the Fifty-Sixth Legislature, Third Called Session, 1959, is hereby amended by adding thereto a new Article to be known as "Article 20.21, Utility Excise Tax" which shall read as follows:

"Article 20.21. Utility Excise Tax:

"(a) Definitions. As used in this Article the following words and phrases shall have the following meanings unless a different meaning clearly appears from the context. The meaning ascribed to the singular form shall also apply to the plural. The masculine gender also includes the feminine and neuter genders..

"(1) 'Gas' means natural gas, mixed gas, liquefied petroleum gas and manufactured gas.

"(2) 'Utility' means every gas corporation, electrical corporation, telephone corporation and telegraph corporation operating in this State.

"(3) 'Gas corporation' means every person owning, controlling, operating or managing any gas plant within this State, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

"(4) 'Gas plant' means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of gas for light, heat or power.

"(5) 'Electrical corporation' means every person owning, controlling, operating or managing any electrical plant within this State, except where electricity is generated on or distributed by the producer through private property only solely for his own use or the use of his tenants and not for sale to others.

"(6) 'Electric plant' means all real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate the production, generation, transmission, delivery or furnishing of electricity for light, heat or power, and all conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power.

"(7) 'Telephone corporation' means every person owning, controlling, op-

erating or managing any telephone line within this State.

"(8) 'Telephone line' means all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

"(9) 'Telegraph corporation' means every person owning, controlling, operating or managing any telegraph line within this State.

"(10) 'Telegraph line' means all conduits, ducts, poles, wires, cables, instruments and appliances, and all other real estate, fixtures and personal property owned, controlled, operated or managed in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires.

"(11) 'Public or any portion thereof' means the public generally or any limited portion of the public, but does not include a utility as defined herein.

"(b) Utility Excise Tax. (1) There is hereby imposed an excise tax of two per cent (2%) of the sales price of any gas, electricity, telephone service, and telegraph service sold by any utility to any person for use within this State.

"(2) The tax herein imposed shall be collected by each utility from each purchaser of gas, electricity, telephone or telegraph service, and shall be paid over to the State as herein provided. Every utility shall add the tax imposed by this Article to the sales price and when added the tax shall constitute a part of the sales price and shall be a debt of the purchaser to the utility until paid and shall be recoverable at law in the same manner as the sales price.

"(3) The amount of the tax herein imposed shall be rounded to the nearest cent at the time of collection.

"(c) Exemptions. (1) The tax herein imposed shall not apply to the sale by one utility of gas, electricity, telephone or telegraph service to another utility when the commodity or service so sold is intended for resale to the public or any portion thereof.

"(2) The tax herein imposed shall not apply to any sale which this State is prohibited from taxing under the

Constitution of the United States or of this State.

"(d) Payment of Tax. The taxes imposed by this Article are due and payable to the Comptroller quarterly. On or before the twenty-fifth (25th) day of January, April, July and October, a return for the preceding calendar quarter shall be filed by each utility with the Comptroller in such form as the Comptroller may prescribe.

"The return shall show the amount of taxes due to the State for the period covered, and proper remittance shall accompany said report. The return shall also contain such other information as the Comptroller may deem necessary for the proper administration of this Article.

"(e) Administration. The Comptroller shall enforce the provisions of this Article and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement.

"(2) The Comptroller may employ accountants, auditors, investigators, assistants and clerks necessary for the efficient administration of this Article and may designate representatives to conduct hearings, prescribe regulations or perform any other duties imposed by this Article or other laws of this State upon the Comptroller.

ARTICLE II

RESTAURANT MEALS AND HOTEL OCCUPANCY TAXES

Section 1. Chapter 23 of Title 122A, Taxation General, Revised Civil Statutes of Texas, Chapter 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

Chapter 23

"Restaurant Meals and Hotel Occupancy Taxes"

"Article 23.01. Definitions.

"The following words, terms and phrases are, for the purposes of this Chapter, except where the context clearly indicates a different meaning, defined as follows:

"(a) 'Hotel' shall mean any building or buildings in which the public may, for a consideration, obtain sleeping accommodations. The term shall include hotels, motels, tourist homes, houses or courts, lodging houses, inns, rooming houses, or other buildings where rooms are furnished for a consideration, but "hotel" shall not be defined so as to include hospitals, sanitariums, or nursing homes.

"(b) 'Restaurant' shall mean any place of business at which prepared food, meals and beverages served with food are sold to the public and shall include but not be limited to lunch counters, restaurants, cafes, drive-in cafes, cafeterias, night clubs, coffee shops, snack bars, hotel dining rooms, private clubs of any kind, or any other place of business serving food to the public for a consideration.

"(c) 'Consideration' shall mean the cost of the room in such hotel and shall not include the cost of any personal services rendered to the occupant of such room not related to the cleaning and readying of such room for occupancy and shall also mean the cost of any restaurant meal served in any restaurant but shall not include any gratuitous tip not included in the cost of such meal.

"(d) 'Restaurant meal' shall mean any food or meal and beverages served with such food or meal sold by a restaurant within the State, including cover charges, for which the purchaser is charged a total consideration of one dollar (\$1.00) or more.

"(e) 'Occupancy' shall mean the use or possession, or the right to the use or possession of any room or rooms in a hotel for any purpose.

"(f) 'Occupant' shall mean anyone, who, for a consideration, uses, possesses, or has a right to use or possess any room or rooms in a hotel under any lease, concessions, permit, right of access, license, contract or agreement.

"(g) 'Person' shall mean any individual, company, corporation, or association owning, operating, managing or controlling any hotel or restaurant.

"(h) 'Comptroller' shall mean the Comptroller of Public Accounts of the State of Texas.

"(i) 'Quarterly Period' shall mean the regular calendar quarters of the year, the first quarter being composed of the months of January, February and March, the second quarter being the months of April, May and June, the third quarter being the months of July, August and September, and the fourth quarter being the months of October, November and December.

"(j) 'Permanent Resident' shall mean any occupant who has or shall have the right to occupancy of any room or rooms in a hotel for at least thirty (30) consecutive days during the current calendar year or preceding year.

"Article 23.02. Hotel Occupancy Tax.

"(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of Two Dollars (\$2) or more per day, such tax to be equal to three per cent (3%) of the consideration paid by the occupant of such room to such hotel.

"(b) No tax shall be imposed hereunder upon a permanent resident.

"(c) No tax shall be imposed hereunder upon a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"Article 23.03. Payment of Hotel Occupancy Tax.

"Every person owning, operating, managing or controlling any hotel, shall collect the tax imposed in Article 23.02 hereof for the State of Texas.

"Article 23.04 Restaurant Meals Tax.

"(a) There is hereby levied a tax upon the cost of any restaurant meal where such total cost, including cover and other charges, is one dollar (\$1.00) or more, such tax to be equal to three per cent (3%) of the consideration paid for such restaurant meal, cover, and other charges, excluding gratuitous tips.

"(b) No tax shall be imposed hereunder upon any meal sold to a permanent resident of any hotel by a restaurant within such hotel where the cost of such meal can be or is added to the hotel bill of the permanent resident.

"(c) No tax shall be imposed hereunder upon restaurant meals prepared by employees thereof and served in any hospital, sanitarium, convalescent or nursing home.

"(d) No tax shall be imposed hereunder upon restaurant meals served by a corporation or association organized and operated exclusively for religious, charitable or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"Article 23.05. Payment of Restaurant Meals Tax.

"Every person owning, operating, managing or controlling any restaurant shall collect the tax imposed in

Article 23.04 hereof for the State of Texas.

"Article 23.06 Reports and Payments.

"On the last day of the month following each quarterly period, every person required in Articles 23.03 and 23.05 hereof to collect the taxes imposed herein shall file a report with the Comptroller showing the consideration paid for all room occupancies and restaurant meals in the preceding quarter, the amount of tax collected on such occupancies and restaurant meals, and any other information as the Comptroller may reasonably require. Such persons shall pay the taxes due on such occupancies and restaurant meals at the time of filing such report.

"Article 23.07. Powers of the Comptroller.

"The Comptroller shall have the power to make such rules and regulations as are necessary to effectively collect the taxes levied herein, and shall upon reasonable notice have access to books and records necessary to enable him to determine the correctness of any report filed as required by this Chapter and the amount of taxes due under the provisions of this Chapter.

"Article 23.08. Penalties.

"If any person required by the provisions of this Chapter to collect the taxes imposed herein, make reports as required herein, and pay to the Comptroller the taxes imposed herein, shall fail to collect such taxes, file such report, or pay such tax, or if such person shall file a false report, such person shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000).

"Article 23.09. Delinquent Taxes, Penalties.

"If any person shall fail to file a report as required herein or shall fail to pay to the Comptroller the taxes imposed herein when said report or payment is due, he shall forfeit two per cent (2%) of the amount due as a penalty, and after the first ten (10) days, he shall forfeit an additional eight per cent (8%). Delinquent taxes and penalties shall draw interest at the rate of six per cent (6%) per annum, beginning sixty (60) days from the date due."

Article Stock Transfer Tax

Section 1. Article 16.01 of Chapter 16, Title 122A, Taxation—General, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Fifty-sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

Article 16.01. Stock Transfer Tax:

"There is hereby imposed and levied a tax as hereinafter provided on all sales; agreements to sell; or memoranda of sales; and all deliveries or transfers of shares; or certificates of stock; or certificates for rights to stock; or certificates of deposit representing an interest in or representing certificates made taxable under this section in any domestic or foreign association, company, or corporation; or certificates of interest in any business conducted by trustee or trustees made after the effective date hereof, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank or by any delivery of any papers or agreement or memorandum or other evidence of sale or transfer or order for agreement to buy, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock or other certificate taxable hereunder, or with the possession or use thereof for any purpose, or to secure the future payment of money or the future transfer of any such stock, or certificate, the tax shall be one per cent (1%) of the total monetary value, consideration or value of any thing exchanged for such stock or certificates. No tax shall be due on an even exchange of stock or certificates; the difference in value shall be the taxable amount where the exchange or transfer is of shares or certificates of unequal value and shall be due from the person receiving the more valuable stock or certificates. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix and cancel the stamps and pay the tax provided by this Chapter. It is not intended by this Chapter to impose a tax upon an agreement evidencing the deposit of certificates as a collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, not upon transfers of such certificates to the lender or to a nominee of the lender or from one

nominee of the lender to another, provided the same continue to be held by such lender or nominee or nominees as collateral security as aforesaid; nor upon the retransfer of such certificates to the borrower; nor upon transfers of certificates from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary; nor upon mere loans of stock or certificates, as the return thereof; nor upon deliveries or transfers to a broker for sale; nor upon deliveries or transfer by a broker to a customer for whom and upon whose order he has purchased the same shall be accompanied by a certificate setting forth the facts; nor upon transfers or deliveries made pursuant to an order of the Federal Securities and Exchange Commission which specifies and itemizes the securities ordered by it to be delivered or transferred (provided that this exemption shall not apply to such transfers or deliveries made before the passage of this Act); nor upon record transfers following such transfers or deliveries; nor in respect to shares or certificates of stock or certificates of rights to stock, or certificates of deposit representing certificates of the character taxed by this Chapter, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this State and when no act necessary to effect the sale or transfer is done in this State, provided, however, the tax levied herein shall be due if the transfer is required to be recorded within this State on the books of such association, company, corporation or trustee. If for any reason the tax levied herein is not paid on any transfer of stock or certificates made after the effective date of this Article, then the purchaser of such stock or certificates shall pay two per cent (2%) of the amount of dividends received from such stock or certificates until the proper amount of tax has been paid. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown

only by the books of the association, company, corporation, or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation, or trustee the requisite stamps, and of such association, company, corporation, or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such sale, to which the stamp provided for by this Chapter shall be affixed and canceled; provided, however, that such bill or memorandum may be made in duplicate and the stamp provided for by this Chapter may be affixed to a duplicate of such bill or memorandum and canceled, and such duplicate of such bill or memorandum may be kept by the party making such sale in his possession, provided that he shall enter upon the original of such bill or memorandum a date and number showing that such bill or memorandum was made in duplicate and that the stamp was affixed to the duplicate thereof retained by the seller. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller or any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in a book of account."

Article IV

Natural Gas Production Tax

Section 1. Article 3.01 of Chapter 3, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, is hereby amended to read as follows:

"Art. 3.01. Calculation of Tax:

"(1) There is hereby levied an occupation tax on the business or occu-

pation of producing gas within this State, computed as follows:

"A tax shall be paid by each producer on the amount of gas produced and saved within this State equivalent to eight per cent (8%) of the market value thereof as and when produced.

"Provided, however, that the amount of the tax on sweet and sour gas shall never be less than 121/1500 of one cent (1¢) per one thousand (1,000) cubic feet.

"(2) In calculating the tax herein levied, there shall be excluded: (a) gas injected into the earth in this State, unless sold for such purpose; (b) gas produced from oil wells with oil and lawfully vented or flared; and (c) gas used for lifting oil, unless sold for such purposes."

Article V

Bookkeeping Amendment

Section 1. Article 9.25 of Chapter 9, Title 122A, Revised Civil Statutes of Texas, as enacted by Section 1, Chapter 1, Acts of the Fifty-sixth Legislature, Third Called Session, 1959, is hereby amended by adding thereto the following paragraph:

"All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

"Article VI"

Section 1. That Article 12.21 of Title 122A Taxation—General of the Revised Civil Statutes of Texas, 1925, be amended to read as follows:

"Art. 12.21. Additional Franchise Tax for Years Ending April 30, 1961, April 30, 1962, April 30, 1963 and April 30, 1964:

"(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01 of this

Chapter for the aforesaid periods by 22.22 per cent.

"(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form in the periods from May 1, 1960, to and including April 30, 1961, and from May 1, 1961, to and including April 30, 1962, and from May 1, 1962, to and including April 30, 1963, and from May 1, 1963, to and including April 30, 1964, pay an additional franchise tax in accordance with the following schedule:

If Total Assets Are at Least	But Less Than	The Additional Tax Shall Be
\$ 0.00	\$ 20,000.00	\$ 7.50
20,000.00	40,000.00	12.00
40,000.00	60,000.00	20.00
60,000.00	80,000.00	30.00
80,000.00	90,000.00	40.00
90,000.00	110,000.00	45.00
110,000.00	120,000.00	50.00
120,000.00	130,000.00	55.00
130,000.00	140,000.00	60.00
140,000.00	150,000.00	65.00

"(3) The additional franchise tax levied by this Article shall be paid at the same time, in the same manner, and subject to the same terms, penalties and conditions as the franchise tax that will become due and payable in the same periods under the provisions of this Chapter.

"(4) The State Comptroller of Public Accounts shall have the right to make and promulgate such rules and regulations and to prescribe such forms as he deems necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

"(5) The additional franchise tax levied by this Article shall be cumulative of all other taxes imposed by this State.

"(6) The additional franchise tax levied by this Article shall expire on April 30, 1964."

"Article VII"

Section 1. Article 13.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as enacted by Chapter 13, Acts of the 56th Legislature, Third Called Session, 1959, is amended to read as follows:

"Art. 13.02. Amount of Tax:

"(1) Every 'owner' who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or dis-

played in this State any 'coin-operated machine' shall pay, and there is hereby levied on each 'coin-operated machine,' as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of Ten Dollars (\$10.00).

"(2) Provided that nothing herein shall prevent the 'operator' of such machine from paying the tax levied in this Chapter for the account of the 'owner' but the payment of such tax by such operator or other person shall not relieve the owner from the responsibility of complying with all provisions of this Chapter including the keeping of records required in this Chapter."

"Article VIII

Section 1. That Section 19 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2 of Chapter 108, Acts of the 54th Legislature, Regular Session, 1955, be amended so as to hereafter read as follows:

"Sec. 19. Fees for License. The fees as provided for in this Act shall be as follows:

For a chauffeur's license, Six Dollars (\$6.00); for a commercial operator's license Four Dollars and Fifty Cents (\$4.50); and for an operator's license, Three Dollars (\$3.00)."

Section 2. That Section 15 of Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as last amended by Section 2 (a) of Chapter 1, Acts of the 56th Legislature, Regular Session, 1959, be amended so as to hereafter read as follows:

"All fees and charges required by this Act and collected by any officer or agent of the Department shall be remitted without deduction on Monday of each week to the Department at Austin, Texas, and Two Dollars (\$2) derived from each chauffeur's license fee, and One Dollar and Fifty Cents (\$1.50) derived from each commercial operator's license fee, and One Dollar (\$1) derived from each operator's license fee shall be deposited in the State Treasury in the General Revenue Fund of the State; and the remainder of all fees so collected shall be deposited in the State Treasury in a fund to be known as the Operator's and Chauffeur's License Fund.

Fees and charges deposited in the Operator's and Chauffeur's License Fund under the provisions of this

Act may, upon appropriation by the Legislature, be used by the Texas Department of Public Safety for the payment of salaries, purchase of equipment and supplies, maintenance, and any and all other necessary expenses incident to the operation of the Department of Public Safety in carrying out the duties as are by law required of such Department. Any remaining balance in the Operator's and Chauffeur's License Fund on September 1 of each and every year shall remain in such Fund and shall be available for appropriation by the Legislature for the maintenance and support of the Texas Department of Public Safety as set forth herein-above."

Article IX

Section 1. This Act shall be effective from and after September 1, 1961.

Section 2. All laws or parts of laws in conflict herewith are repealed to the extent of the conflict.

Section 3. Application of Chapter: If any provisions of this Chapter or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Chapter, in the application of such provision to other persons or circumstances shall not be affected thereby.

Section 4. Emergency Clause: The State of Texas, facing the greatest financial crisis in its history, requires additional revenue to retire the General Fund deficit and to provide money for schools, mental hospitals, medical aid to elder citizens, the prison system, and the orderly operation of state government for a growing population and an expanding economy. Concern for the health and welfare of all the people of Texas must be paramount. Especially is it vital to provide the funds whereby Texas children may receive free public education as promised by the Constitution, which is essential to the future of Texas. This urgent need creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and that this Act shall take effect and be in force from and after September 1, 1961, it is so enacted.

On motion of Senator Aikin and by unanimous consent, the reading of the substitute was dispensed with and

he explained the substitute for the pending Committee Amendment.

Question—Shall the substitute by Senator Aikin for the pending Committee Amendment as amended be adopted?

Reason for Vote

I voted to suspend the rules in order to take up and consider H. B. 334 because it is imperative that we begin debate and consideration of a tax bill. I would not vote for the bill in its present form, but intend to vote for a more equitable substitute.

SCHWARTZ

Welcome Resolutions

S. R. No. 486—By Senator Moffett: Extending welcome to Mr. Jack Lacy et al. of Vernon and Mr. Rex Sullivan et al. of Quanah.

S. R. No. 488—By Senator Rogers: Extending welcome to Alf Lyngra of Oslo, Norway.

S. R. No. 489—By Senator Aikin: Extending welcome to students and teachers of graduating class of Deport High School.

S. R. No. 490—By Senator Herring: Extending welcome to students and teacher of Highland Park School of Austin.

S. R. No. 491—By Senator Dies: Extending welcome to David Henderson, Carey Williams and Wesley Neal.

Memorial Resolution

S. R. No. 485—By Senator Willis: Memorial resolution for Dr. George A. Schenewerk.

Recess

Senator Smith moved that the Senate stand recessed until 10:00 o'clock a.m. tomorrow.

Question on the motion to recess, yeas and nays were demanded.

The motion prevailed by the following vote:

Yeas—16

Baker	Fuller
Calhoun	Hardeman
Creighton	Hazlewood
Dies	Hudson

Lane
Parkhouse
Ratliff
Reagan

Roberts
Rogers
Secrest
Smith

Nays—13

Aikin
Colson
Crump
Gonzalez
Herring
Kazen
Krueger

Martin
Moffett
Owen
Patman
Schwartz
Willis

Absent

Moore

Weinert

Accordingly, the Senate at 10:40 o'clock p.m. took recess until 10:00 o'clock a.m. tomorrow.

SIXTY-SIXTH DAY

(Continued)

(Wednesday, May 17, 1961)

After Recess

The Senate met at 10:00 o'clock a.m., and was called to order by the President.

Resolutions Signed

The President signed in the presence of the Senate after the caption had been read, the following enrolled resolutions:

S. C. R. No. 61, Recalling S. B. No. 414 from the Governor for further consideration.

S. C. R. No. 63, Recalling S. C. R. No. 42 from the Governor's Office for further consideration.

Senate Concurrent Resolution 66 on First Reading

Senator Dies moved that Senate Rule 114 and Section 5 of Article III of the State Constitution be suspended to permit his introducing at this time, a resolution, the provisions of which he explained.

The motion prevailed by the following vote:

Yeas—27

Aikin	Creighton
Baker	Crump
Calhoun	Dies
Colson	Fuller